

**IN THE SUPREME COURT OF TEXAS**

NO. 20-0127

IN RE DIOCESE OF LUBBOCK, RELATOR

ON PETITION FOR WRIT OF MANDAMUS

**Argued January 6, 2021**

JUSTICE DEVINE delivered the opinion of the Court, in which CHIEF JUSTICE HECHT, JUSTICE GUZMAN, JUSTICE LEHRMANN, JUSTICE BLACKLOCK, JUSTICE BUSBY, JUSTICE BLAND, and JUSTICE HUDDLE joined.

JUSTICE BLACKLOCK filed a concurring opinion.

JUSTICE BOYD filed a dissenting opinion.

The ecclesiastical abstention doctrine prohibits civil courts from delving into matters of “theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them.” *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 714 (1976) (quoting *Watson v. Jones*, 80 U.S. 679, 733 (1871)). The doctrine is grounded in the First Amendment, which protects the right of religious institutions “to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.” *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church*, 344 U.S. 94, 116 (1952).

In this original mandamus proceeding, the Diocese of Lubbock, as relator, asserts that ecclesiastical abstention prohibits the trial court from assuming jurisdiction over a suit brought by one of its ordained deacons against the Diocese and that the trial court should have therefore granted the Diocese's plea to the jurisdiction. The suit arises out of an internal investigation by the Diocese into its own clergy, the inclusion of the deacon's name on a list of its clergy credibly accused of sexual abuse of a minor, and the Diocese's public statements regarding the list and church reforms following its release to the Diocese's public website. The deacon maintains that he has never sexually abused a child and that the Diocese defamed him by publicly implying that those on the list were indeed guilty of such abuse.

The court of appeals denied the Diocese's petition for mandamus relief, concluding that the Diocese's investigation lost ecclesiastical protection when it went beyond church walls and related to an issue—sexual abuse—that is not strictly and purely ecclesiastical. 592 S.W.3d 196 (Tex. App.—Amarillo 2019). Under the First Amendment, however, courts must abstain from exercising civil jurisdiction over claims that require them to “resolve a religious question” or “impede the church's authority to manage its own affairs.” *Westbrook v. Penley*, 231 S.W.3d 389, 397 (Tex. 2007). We conclude that the substance and nature of the deacon's claims against his church will necessarily require the trial court to evaluate whether the Diocese properly applied Canon Law and are inextricably intertwined with the Diocese's internal directive to investigate its clergy. That is, the deacon's

claims relating to the Diocese's publication and communication of the results of its investigation cannot be severed from its policy to investigate its clergy in the first place. Thus, we conditionally grant the Diocese's petition for writ of mandamus and direct the trial court to dismiss the deacon's underlying lawsuit.

## **I. Background**

Jesus Guerrero was ordained as a deacon of the Diocese of Lubbock in 1997. Deacons are ministers in the Catholic Church, authorized to baptize parishioners, assist the priest at Mass, preach homilies, celebrate weddings, and conduct funeral rites. In 2003, the Diocese temporarily suspended Guerrero's diaconal faculties after receiving reports of sexual misconduct involving Guerrero and a woman with a history of mental and emotional disorders. Upon completion of an investigation, the Bishop of the Diocese indefinitely suspended Guerrero's diaconal faculties and privileges. In July 2006, the Diocese granted Guerrero's request for reinstatement of his diaconal faculties. However, a new allegation and subsequent investigation of sexual misconduct involving Guerrero and the same woman led Bishop Placido Rodriguez to permanently withdraw Guerrero's diaconal faculties in November 2008. Although Guerrero may no longer perform sacramental functions, he was not laicized and remains an ordained deacon.

The Texas Catholic Church consists of fifteen dioceses, each led by a bishop. Each diocese uses its own website to communicate with its members. In

September 2018, to assist victims of abuse and improve transparency with Catholics in all the Texas Dioceses, the Catholic Bishops of Texas decided to release the names of those clergy against whom credible allegations of sexual abuse of a minor have been raised. After the individual dioceses completed a review of their files and compiled their lists, the respective lists were posted on each diocese's website on January 31, 2019, along with an accompanying statement.

Guerrero's name was included on the Lubbock Diocese's list. The list, entitled "Names of All Clergy with a Credible Allegation of Sexual Abuse of a Minor," stated its purpose and the process of determining who belonged on the list; it also invited others to report any sexual abuse experiences to the Diocese. The list included names of priests or clergy against whom a "credible allegation" had been made since the Lubbock Diocese's inception in June 1983. A priest or clergy had a "credible allegation" of sexual abuse of a minor if "after review of reasonably available, relevant information in consultation with the Diocesan Review Board or other professionals, there is reason to believe [it] is true." To prepare the list, the Diocese's attorney "engage[d] the services of a retired law enforcement professional and a private attorney to review all clergy files for any credible allegations of abuse of minors." The list, as originally published, did not include the canonical meaning of the term "minor," which the Diocese asserts—under Canon Law—includes "a person who habitually lacks the use of reason" and encompasses any "person deemed vulnerable due to a health or mental condition."

The Diocese issued a news release the same day that it published the list. The news release stated the Lubbock Diocese joined the other Texas Dioceses “to release names of clergy who have been credibly accused of sexually abusing a minor, going back at least to 1950 or to the year of the establishment of the [D]iocese.” The decision to release the list “was made in the context of [the Church’s] ongoing work to protect children from sexual abuse” and “to promote healing and a restoration of trust in the Catholic Church.” Bishop Robert Coerver explained in a letter that the Diocese released the names as part of a broader, good-faith effort to restore the trust and confidence of its membership and because the Diocese is “serious about ending the cycle of abuse in the Church and society at large.”

A local news station interviewed Chancellor and Marty Martin, the Lubbock Diocese’s principal notary administrative manager, about the list. The report stated that while the Church had previously disclosed past incidents of sexual abuse to the authorities and to other church members, the recent investigation stemmed from a desire to ensure that the Church was a safe environment for everybody. It quoted Chancellor Martin as saying that “the [C]hurch is safe for children.”

Guerrero demanded a retraction of his name from the list. *See* TEX. CIV. PRAC. & REM. CODE § 73.055. In response, the Diocese sent Guerrero a letter explaining that the Bishops from the Texas Dioceses formulated a plan in 2018 to evaluate which of its priests and clergy had been credibly accused of sexual

abuse of a minor. The Lubbock Diocese derived its plan from the Charter for Protection of Children and Young People (the Charter), which was authored by the United States Conference of Bishops. The Charter encourages more transparency within the Catholic Church around issues of sexual abuse and represents a shift in how sexual abuse within the Church is addressed. For instance, the Charter arranges review boards to assess allegations of sexual abuse of a “minor” to determine a priest’s or clergy’s suitability for ministry. Consistent with Canon Law, the Charter defines “minor” to include those who habitually lack the use of reason and are therefore deemed vulnerable adults. The letter also detailed some of the separate reports of sexual assault that the Lubbock Diocese had received against Guerrero. It went on to state that “[t]he adult female involved in these incidents . . . is severely bi-polar, is not allowed to drive, and may not have been on her medications at the time of the various instances which were witnessed.” Based on the investigation by the Diocesan Review Board and an independent review committee, the letter concluded, the Lubbock Diocese had determined that the allegations of sexual abuse of a “minor” against Guerrero were credible, as understood by Canon Law.

Guerrero subsequently filed suit, alleging defamation and intentional infliction of emotional distress. The Diocese responded with a motion to dismiss under the Texas Citizens Participation Act (TCPA), asserting that Guerrero’s suit related to the Diocese’s right to free speech. *See id.* § 27.003 The Diocese also filed a plea to the jurisdiction arguing that the ecclesiastical abstention doctrine precluded the trial court from exercising jurisdiction over the

suit under the First Amendment. The trial court denied both motions. The Diocese appealed the interlocutory order denying the TCPA motion to dismiss, *see id.* § 27.008, and filed an original petition seeking mandamus relief from the order denying its plea to the jurisdiction.

The court of appeals affirmed in part and reversed in part the trial court’s denial of the Diocese’s TCPA motion to dismiss, *Diocese of Lubbock v. Guerrero*, 591 S.W.3d 244, 248 (Tex. App.—Amarillo 2019), and denied the Diocese’s mandamus petition in a separate opinion, *In re Diocese of Lubbock*, 592 S.W.3d 196, 198 (Tex. App.—Amarillo 2019, orig. proceeding). In denying mandamus relief, the court of appeals reasoned that, once the Diocese released the list to the public, the dispute was no longer ecclesiastical because it extended beyond the church polity and involved incidents that had occurred more than nine years prior. *Id.* at 202–03. The court concluded that the Diocese’s decision to post the list online, engage with the media, and release public statements indicated an intentional effort to engage externally with the public instead of internally with the church. *Id.* at 203–04. This “pivotal nuance” of intentional public engagement, the court reasoned, demonstrated the absence of an ecclesiastical matter. *Id.* at 202. The list and accompanying statements revealed the Diocese’s intent to engage with society at large without “any nexus between the Diocese’s conduct and any theological, dogmatic, or doctrinal reason for engaging in it.” *Id.* at 204. Finally, the court rejected the Diocese’s argument that the case would require a court to determine the canonical meaning of “minor” because a statement’s defamatory meaning (or

lack thereof) is based on “how a person of ordinary intelligence would perceive the accusation.” *Id.* The court of appeals determined that the list and the Diocese’s accompanying statements referenced abuse of a “minor” and “children,” which are terms of secular meaning and would not require consideration of any ecclesiastical meaning. *Id.* at 205.

In this Court, the Diocese petitions for review of the court of appeals’ affirmance of the order denying its motion to dismiss under the TCPA and again seeks mandamus relief from the denial of its plea to the jurisdiction. We granted the Diocese’s petition for review and consolidated it with the petition for writ of mandamus for argument. Because the jurisdictional issue presented in the mandamus petition is dispositive, we dismiss the cause in the accompanying TCPA appeal, *see Diocese of Lubbock v. Guerrero*, No. 20-0005, \_\_\_ S.W.3d \_\_\_ (Tex. 2021) (per curiam), and turn to the request for mandamus relief, *see BP Am. Prod. Co. v. Laddex, Ltd.*, 513 S.W.3d 476, 479 (Tex. 2017) (addressing first the issue that would deprive a court of exercising jurisdiction).

## **II. Standard of Review**

Mandamus relief is appropriate when the trial court lacks jurisdiction to hear a case. *See In re Crawford & Co.*, 458 S.W.3d 920, 929 (Tex. 2015) (per curiam); *In re Entergy Corp.*, 142 S.W.3d 316, 320–21 (Tex. 2004). “Lack of jurisdiction may be raised by a plea to the jurisdiction when religious-liberty grounds form the



basis for the jurisdictional challenge.”<sup>1</sup> *Westbrook*, 231S.W.3d at 394. We review a trial court’s ruling on a plea to the jurisdiction de novo. *Hous. Belt &*

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<sup>1</sup> In *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 565 U.S. 171 (2012), the United States Supreme Court concluded that the “ministerial exception”—a doctrine that is independent of but related to abstention and addresses employment disputes between churches and its ministers—“operates as an affirmative defense to an otherwise cognizable claim, not a jurisdictional bar.” *Id.* at 188, 195 n.4. Some courts have taken this to mean that the ecclesiastical abstention doctrine now operates only as an affirmative defense. *See, e.g., Doe v. First Presbyterian Church U.S.A. of Tulsa*, 421 P.3d 284, 290–91 (Okla. 2017); *Pfeil v. St. Matthews Evangelical Lutheran Church of Unaltered Augsburg Confession of Worthington*, 877 N.W.2d 528, 534–35 (Minn. 2016); *St. Joseph Cath. Orphan Soc’y v. Edwards*, 449 S.W.3d 727, 737 (Ky. 2014). Other courts have continued to apply the doctrine as a jurisdictional bar after *Hosanna-Tabor*. *See, e.g., Church of God in Christ, Inc. v. L.M. Haley Ministries, Inc.*, 531 S.W.3d 146, 157 (Tenn. 2017); *Diocese of Palm Beach, Inc. v. Gallagher*, 249 So. 3d 657, 661 (Fla. Dist. Ct. App. 2018); *In re St. Thomas High Sch.*, 495 S.W.3d 500, 513–14 (Tex. App.—Houston [14th Dist.] 2016, no pet.). This past term, the Supreme Court in *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049 (2020), reaffirmed religious institutions’ ecclesiastical autonomy in matters of faith, doctrine, ministry, and governance. *Id.* at 2060–61. The Court left undisturbed its pronouncement in *Watson v. Jones*, 80 U.S. 679 (1871), that those matters implicating “theological controversy, church discipline, ecclesiastical government or the conformity of the members of the church to the standards of morals required”—that is, those matters that the ecclesiastical abstention doctrine covers—relate to a court’s jurisdiction to hear a case. *Id.* at 733. And *Watson* remains binding until the Supreme Court says otherwise. *See Bosse v. Oklahoma*, 137 S. Ct. 1, 2 (2016) (per curiam) (citations omitted).

*Terminal Ry. Co. v. City of Houston*, 487 S.W.3d 154, 160 (Tex. 2016). A court should deny a plea to the jurisdiction when “the pleader has alleged facts that affirmatively demonstrate the court’s jurisdiction to hear the cause.” *City of El Paso v. Heinrich*, 284 S.W.3d 366, 378 (Tex. 2006) (internal quotations omitted). “If the pleadings affirmatively negate jurisdiction,” however, the plea should “be granted without affording the plaintiff[] an opportunity to replead.” *Hous. Belt & Terminal Ry. Co.*, 487 S.W.3d at 160 (citing *Tex. Dep’t of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 227 (Tex. 2004)).

### III. Discussion

#### A

The Lubbock Diocese contends that mandamus relief is appropriate because the First Amendment forecloses the courts’ jurisdiction. The First Amendment prohibits government—and courts—from interfering with a believer’s ability to observe his faith and from interfering with a church’s management of its internal affairs. *EEOC v. Cath. Univ. of America*, 83 F.3d 455, 460 (D.C. Cir. 1996); see *Kreshik v. St. Nicholas Cathedral*, 363 U.S. 190, 191 (1960) (per curiam). Churches have a fundamental right under the First Amendment to decide for themselves, free from state interference, matters of church governance as well as those of faith and doctrine. *Westbrook*, 231 S.W.3d at 397 (citing *Watson*, 80 U.S. at 728–29). It is a core tenet of the First Amendment that in resolving civil claims courts must be careful not to intrude upon internal affairs of church governance and autonomy. *Id.* Autonomy extends to the rights of hierarchical

religious bodies to establish their own internal rules and regulations and to create tribunals for adjudicating disputes over religious matters. *Milivojeovich*, 426 U.S. at 708–09, 724–26. And it extends to a church’s conclusions regarding its own ecclesiastical rules, customs, and laws. *Brown v. Clark*, 116 S.W. 360, 363 (Tex. 1909). Government action that interferes with this autonomy or risks judicial entanglement with a church’s conclusions regarding its own rules, customs, or laws is therefore prohibited by the First Amendment. *See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993); *Kedroff*, 344 U.S. at 116; *Brown*, 116 S.W. at 363.

The First Amendment does not bar all claims against religious bodies, though. *Tilton v. Marshall*, 925 S.W.2d 672, 677 (Tex. 1996). A court may exercise jurisdiction over a controversy if it can apply neutral principles of law that will not require inquiry into religious doctrine, interference with the free-exercise rights of believers, or meddling in church government. *Westbrook*, 231 S.W.3d at 398–400. Under the neutral-principles methodology, “courts decide non-ecclesiastical issues such as property ownership based on the same neutral principles of law applicable to other entities, while deferring to religious entities’ decisions on ecclesiastical and church polity questions.” *Masterson v. Diocese of Nw. Tex.*, 422 S.W.3d 594, 596 (Tex. 2013) (internal citation omitted); *see also Westbrook*, 231 S.W.3d at 399. Although we have yet to apply the neutral-principles methodology outside church property disputes, lower courts in Texas have found them applicable in certain, narrow circumstances. *See, e.g., Shannon v. Mem’l*

*Drive Presbyterian Church U.S.*, 476 S.W.3d 612, 624–25 (Tex. App.—Houston [14th Dist.] 2015, pet. denied) (concluding ecclesiastical abstention did not bar a suit that arose out of a church’s violation of a settlement agreement, which was not an inherently ecclesiastical activity). Indeed, any exception to ecclesiastical abstention by application of neutral principles must be narrowly drawn to avoid inhibiting the free exercise of religion or imposing secular interests on religious controversies. *Jones v. Wolf*, 443 U.S. 595, 603–05 (1979); *Milivojeovich*, 426 U.S. at 710. In other words, courts should consider not only whether a neutral principle exists without regard to religion, but also whether the application of neutral principles would impose civil liability upon a church for complying with its own internal rules and regulations or resolving a religious matter. *Westbrook*, 231 S.W.3d at 400.

The Diocese argues that the ecclesiastical abstention doctrine bars Guerrero’s suit because civil court intervention in this dispute would (1) impede church governance and (2) require interpretation and review of Canon Law. Guerrero, however, contends that abstention does not apply because the alleged defamatory statements are “not strictly and purely ecclesiastical in nature.” According to Guerrero, the Diocese was not clear in what it meant by the term “minor” when it released its list. To Guerrero, this omission is “the crux of this case” because the surrounding context of the list suggests that the Diocese meant “child” when it said “minor.” Guerrero suggests that had the Diocese explained it meant “vulnerable adult” when referring to “minor,” or that it referred to minor “according to Canon Law,” then

the determination of whether to include him on the list may have been a strictly ecclesiastical one and therefore protected from intrusion by the First Amendment. Moreover, Guerrero contends that this is not an issue of church governance because the statements extended beyond church walls and reflect the Diocese's desire to engage with society on a social issue—sexual abuse.

## B

In determining whether ecclesiastical abstention applies, courts will analyze whether a particular dispute is ecclesiastical or merely a civil-law controversy in which the church happens to be involved.<sup>2</sup> *See Tran v. Fiorenza*, 934 S.W.2d 740, 743 (Tex. App.—Houston [1st Dist.] 1996, no writ). In making this determination, we look to the substance and nature of the plaintiff's claims. *See Patton v. Jones*, 212 S.W.3d 541, 548 (Tex. App.—Austin 2006, pet. denied). Because courts are prohibited from risking judicial entanglement with ecclesiastical matters, *see Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049, 2069 (2020), if the substance and nature of the plaintiff's claims are inextricably intertwined with matters of doctrine or church governance, then the case must be dismissed,

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<sup>2</sup> Put differently, a church is not immune from tort liability merely because it is a church, regardless of whether a church member or non-church member brings the suit. *See, e.g., Cox v. Thee Evergreen Church*, 836 S.W.2d 167 (Tex. 1992) (church member slip-and-fall claim against church); *Zion Missionary Baptist Church v. Pearson*, 695 S.W.2d 609 (Tex. App.—Dallas 1985, writ denied) (contract claim against church for unpaid balances).

*Jennison v. Prasifka*, 391 S.W.3d 660, 665, 668 (Tex. App.— Dallas 2013, no pet.).

In his petition, Guerrero alleges that the Diocese defamed him by including his name on a list of clergy “credibly accused of sexual abuse of a minor,” disclosing that list to the public, and discussing the list with the media. He goes on to assert that the Diocese’s communications were defamatory “both in their particular details and in their main point, essence or gist,” “in that they falsely state that Jesus Guerrero was and had been ‘credibly accused’ of sexual misconduct of [sic] a minor.” Guerrero maintains that the Diocese reached its conclusion to include him on the list despite a lack of evidence supporting that conclusion, asserting that he “has never admitted to any sexual misconduct, he was not criminally charged with anything[,] and no one ever testified that Guerrero did anything inappropriate” with the woman who was the subject of the abuse allegations.

He disputes whether the woman would qualify as a minor under Canon Law and whether the Diocese has credible allegations against him generally. He reiterated these claims at oral argument.

As the Lubbock Diocese explained in response to Guerrero’s request for a retraction, the list arose out of and was created in accordance with the Charter—a directive authored by the United States Conference of Bishops for each diocese to investigate allegations of sexual misconduct committed by its clergy against minors. In conducting its review, and as reflected in its revised list released in April 2019, the Lubbock Diocese investigated allegations of abuse committed

against “person[s] who habitually lack[] the use of reason” or those deemed “minors” under Canon Law. Evidence in Guerrero’s file coupled with a two-tiered review process led the Diocese to determine that it possessed credible allegations against Guerrero of sexual abuse of a “minor.” In compliance with its directive to be more “open and transparent in communicating with the public of sexual abuse of minors by clergy,” it placed the list on its website—the Diocese’s means of ordinary communication with its members.

To the extent that Guerrero’s claims directly call into question the Diocese’s investigation and conclusions that led to the creation of the list, they necessarily reach behind the ecclesiastical curtain. In *Westbrook*, we acknowledged that the plaintiff properly abandoned her defamation claim regarding the defendant’s statement about her “biblical impropriety” because such a question would have required the Court to delve into the religious question of whether her behavior was biblically improper. 231 S.W.3d at 396. Resolution of the plaintiff’s defamation suit would have required the Court to evaluate the meaning of biblical impropriety and whether the defendant was accurate in his conclusions. This is because “[t]rue statements cannot form the basis of a defamation complaint.” *Double Diamond, Inc. v. Van Tyne*, 109 S.W.3d 848, 855 (Tex. App.—Dallas 2003, no pet.) (citing *Randall’s Food Mkts., Inc. v. Johnson*, 891 S.W.2d 640, 646 (Tex. 1995)). As Guerrero states in his petition, determining whether the Diocese incorrectly included his name on the list would require a court to evaluate whether the Diocese “falsely state[d] that Jesus Guerrero was and had been ‘credibly accused’ of

sexual misconduct of [sic] a minor.” However, as the Diocese informed Guerrero, it based the scope of its investigation on the canonical meaning of minor: “a person who habitually lacks the use of reason,” which includes “vulnerable adults.” Thus, a court would have to evaluate whether the Diocese had credible allegations against Guerrero under the canonical meaning of “minor.” This would necessarily entail a secular investigation into the Diocese’s understanding of the term “minor,” whether a court agrees that the woman he allegedly sexually abused qualifies as a “minor” under Canon Law, and whether the allegations it possesses were sufficiently “credible.” *See Kavanagh v. Zwilling*, 997 F. Supp. 2d 241, 247, 252–54 (S.D.N.Y. 2014) (holding court lacked jurisdiction over plaintiff’s libel per se claim based on a church’s press release that plaintiff “was found guilty by a Church court of multiple counts of sexual abuse of a minor”).

This inquiry would not only cause a court to evaluate whether the Diocese properly applied Canon Law but would also permit the same court to interlineate its own views of a Canonical term. Indeed, any investigation would necessarily put to question the internal decision making of a church judicatory body. *See, e.g., Whole Woman’s Health v. Smith*, 896 F.3d 362, 373–74 (5th Cir. 2018) (trial court’s pretrial order compelling religious organization to respond to discovery was an abuse of discretion because it would, in part, reveal internal communications and interfere with decision-making processes of the religious organization). But courts may not investigate and resolve the application of religious doctrine and practice. *See Presbyterian Church in U.S. v. Mary*



*Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449 (1969) (“First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice.”). And, to prevent courts from impermissibly influencing church governance, *see Our Lady of Guadalupe Sch.*, 140 S. Ct. at 2060, courts may not second-guess the decisions reached by a church judicatory body in the application of its own rule, custom, or law, *see Brown*, 116 S.W. at 363. Thus, to the extent Guerrero’s suit directly challenges the Diocese’s application of Canon Law in its internal governance process, the court lacks jurisdiction.

The court of appeals concluded that a “pivotal nuance” in this case is that the Diocese’s communication went beyond church walls. 592 S.W.3d at 202. It reasoned that a key fact in determining whether ecclesiastical abstention applies is to whom the church communicated. *Id.* The court observed that a church publicizing “matters historically deemed ecclesiastical” undermines a church’s ability to argue that the “dispute remains an internal ecclesiastical or church polity issue.” *Id.* That is, the court of appeals focused primarily on the *publication* of the list without regard to the Diocese’s *reason* for including Guerrero on the list. *Id.* at 202–04.

Whether a party’s claims against a church are barred by ecclesiastical abstention, though, is based not on whether a publication goes beyond church walls but rather whether the substance and nature of the plaintiff’s claims implicate ecclesiastical matters,

including a church's internal affairs, governance, or administration. *Westbrook*, 231 S.W.3d at 396–97; *Williams v. Gleason*, 26 S.W.3d 54, 59 (Tex. App.—Houston [14th Dist.] 2000, pet. denied). The court of appeals' distinction runs afoul of our directive in *Westbrook* that a court may not rely on neutral principles when application of those principles would impose civil liability on a church that complies with its own internal governance. 231 S.W.3d at 400. The court of appeals' focus on the publication ignores the real critical nuance in this case: that Guerrero's suit is “inextricably intertwined” with the Diocese's decision to investigate its own clergy, judicial review of which would impermissibly interfere with a church's ability to regulate the character and conduct of its leaders. *Jennison*, 391 S.W.3d at 668; see *Hosanna-Tabor*, 565 U.S. at 201.

In *Westbrook*, a former church member claimed that her secular counselor—who was also her pastor—violated a secular duty of confidentiality when he disclosed to church elders information she had discussed during counseling. 231 S.W.3d at 396, 402. We concluded that ecclesiastical abstention barred the suit. *Id.* at 402–05. We reasoned that the pastor had conflicting duties, one as a secular counselor to maintain the confidentiality of his clients and the other to comply with church directives to disclose a member's conduct that may be unbecoming of the church's moral standards. *Id.* at 391–92, 402–03 (“[T]he publication about which [the former member] complains was made in the course of the church disciplinary process and communicated by [the counselor] pursuant to the requirements of that process.”). In holding that the First Amendment

barred adjudication of the suit, we recognized that allowing the former member's professional negligence claim to proceed would impose civil tort liability on a pastor who complied with an internal church directive and policy to disclose the relationship in a manner consistent with church teaching. *Id.* at 402 (citing *Milivojeovich*, 426 U.S. at 717 (stating that "questions of church discipline and composition of the church hierarchy are at the core of ecclesiastical concern"))).

Similarly, Guerrero's suit seeks to impose liability on the Diocese for complying with its directive to investigate allegations of sexual abuse of its clergy. *See Hosanna-Tabor*, 565 U.S. at 190 (prohibiting "government interference with an internal church decision that affects the faith and mission of the church itself"). Investigations that relate to the character and conduct of church leaders are inherently ecclesiastical. *See id.* at 201 (Alito, J., concurring) ("[B]oth the content and credibility of a religion's message depend vitally on the character and conduct of its teachers . . . . For this reason, a religious body's right to self-governance must include the ability to select, and to be selective about, those who will serve as the very 'embodiment of its message' and 'its voice to the faithful.'"). Although tort law imposes a duty not to defame or intentionally inflict emotional distress upon others, *see Hersh v. Tatum*, 526 S.W.3d 462, 465 (Tex. 2017); *In re Lipsky*, 460 S.W.3d 579, 593 (Tex. 2015), a civil suit that is inextricably intertwined with a church's directive to investigate its clergy cannot proceed in the courts.

And as the Diocese disclosed to Guerrero, it was acting in accord with the Charter's directive to

investigate its clergy. The Diocese stated that it applied Canon Law and instituted a review process by which it would evaluate whether the allegations and evidence it possessed against its clergy were credible. It is the fruit of this investigation about which Guerrero complains, and the publications he contests merely reflect the investigative result. Bishop Coerver's official list and accompanying explanation provide general information about each clergy on the list, the Diocese's news release offered its motivation for conducting the investigation, and the accompanying news reports describe the Diocese's transition to more transparency. Thus, Guerrero's challenge to any publication is ultimately a challenge to the Diocese's underlying investigation into its own clergy and application of Canon Law. A civil court, though, is prohibited from determining whether a church properly applied its own principles and policies, *see NLRB v. Cath. Bishops of Chicago*, 440 U.S. 490, 502 (1979); *Brown*, 116 S.W. at 363, and from interfering with internal management decisions that are central to its mission, such as investigating the conduct and character of its clergy, *see Our Lady of Guadalupe Sch.*, 140 S. Ct. at 2060; *Hosanna-Tabor*, 565 U.S. at 201 (Alito, J., concurring).

The court of appeals' opinion in *Shannon* provides a helpful contrast. In that case, Memorial Presbyterian Church and its former employee, Jessica Shannon, reached an agreement settling a dispute about her termination. 476 S.W.3d at 618. The agreement included a nondisparagement clause. *Id.* After Shannon obtained employment at Austin Presbyterian Theological Seminary as a development officer, which required her to raise funds for the

Seminary, it reached out to Memorial Presbyterian for her references. *Id.* The church's executive director, acknowledging that the parties had reached a settlement agreement that limited what he could say, made a variety of statements regarding Shannon's ability to carry out her duties to raise funds, which Shannon alleged led to her termination. *Id.* at 618–19. In concluding that the ecclesiastical abstention doctrine did not bar the suit, the court reasoned that Shannon's claims were directed at Memorial Presbyterian's violation of the nondisclosure agreement. *Id.* at 624. The statements that Shannon identified as leading to her termination related to her capacity to operate as a development officer and raise funds, unrelated to any ministerial or clerical role. *See id.* at 624–25. The court could apply neutral principles of contract law to determine whether the church disparaged her in violation of the settlement agreement without intervening in areas traditionally held to involve religious doctrine; interpreting church constitutions, by-laws, or governing documents; or deciding matters of the congregational or hierarchical nature of the church. *Id.*

The same is not true for Guerrero. Unlike in *Shannon*, Guerrero's claim is tied to the Diocese's decision to investigate allegations against its clergy. The actions complained of in *Shannon* were divorced from the employee's underlying termination and any other traditional matter of church governance. *Id.* The reference provided by Memorial Presbyterian's executive director was about Shannon's capacity to function as a development officer, not a pastor. *Id.* Thus, the court was able to apply neutral principles of contract law to determine whether the church

complied with the settlement agreement, which was not itself ecclesiastical, and the claims did not require the court “to intervene in the hiring, firing, discipline, or administration of the Church’s clergy” or the exercise of its First Amendment rights. *Id.* at 624.

Although Guerrero contends that neutral principles could resolve this dispute, his own pleadings and concessions cut against this argument because his suit ultimately challenges the result of a church’s internal investigation into its own clergy, which is inherently ecclesiastical. Even to the extent that his suit challenges the publication of the list, as the court of appeals concluded, the Diocese only published the results of its own investigation. That is, Guerrero’s claims are inextricably intertwined with the Diocese’s decision to include his name on the list—which it published on its website as an ordinary means of communication to its membership—at the culmination of its investigation into its clergy. The Diocese’s public statements about the list neither mention nor reference Guerrero’s name. Thus, the list’s publication, and Guerrero’s suit, cannot be severed from the process that led to its creation.

The dissent disagrees, arguing that the underlying investigation is immaterial because Guerrero’s suit complains only about the Diocese’s including his name on the list published to its website. *Post* at \_\_\_\_\_. However, the reason Guerrero appeared on the list is that the Diocese conformed to the Charter, an internal directive to investigate its clergy. The Diocese’s compliance with its directive, and the results of that investigation, is a predicate to Guerrero’s suit. Exercising jurisdiction over it would

necessarily “encroach[] on the church’s ability to manage its internal affairs.” *Westbrook*, 231 S.W.3d at 395. Thus, even assuming the dissent is correct that a court could apply neutral principles to interpret a Canonical term, *post* at \_\_\_, doing so would invade a religious institution’s “autonomy with respect to internal management decisions that are essential to the institution’s central mission,” *Our Lady of Guadalupe Sch.*, 140 S. Ct. at 2060. Here, exercising jurisdiction would invade the Diocese’s internal management decision to investigate its clergy consistent with its own norms and policies.

Moreover, that the Diocese made public statements about its new policy and a statement at the completion of its investigation does not necessarily foreclose ecclesiastical protection. *See Patton*, 212 S.W.3d at 555 n.12 (noting that scope of publication is “not a bright-line rule”). The doctrine allows a religious institution to engage freely in ecclesiastical discussions with more than just its members. *See Bryce v. Episcopal Church in the Diocese of Colo.*, 289 F.3d 648, 658 (10th Cir. 2002). It extends to publications that relate to a religious group’s right to shape its own faith and mission. *Hosanna-Tabor*, 565 U.S. at 188. The Diocese, in exercising its right to shape its own faith and mission, disclosed to the public its reforms to handling sexual-abuse allegations within the church. Such discussion of changes in church policy, which the Diocese explains were rooted in broader church governance decisions, do not revoke ecclesiastical protection. *See, e.g., Whole Woman’s Health*, 896 F.3d at 374 (“[T]he importance of securing religious groups’ institutional

autonomy, while allowing them to enter the public square, cannot be understated . . . .”); *see also Hosanna-Tabor*, 565 U.S. at 201 (Alito, J., concurring) (“A religious body’s control over such ‘employees’ is an essential component of its freedom to speak in its own voice, both to its own members and to the outside world.”). Curtailing First Amendment protections when a church exercises its right to shape its own faith and mission threatens to entangle the courts in a religious dispute.<sup>3</sup> *See Pleasant Glade Assembly of God v. Schubert*, 264 S.W.3d 1, 12 (Tex. 2008) (“Particularly, when the adherent’s claim, as here, involves only intangible emotional damages allegedly caused by a sincerely held religious belief, courts must carefully scrutinize the circumstances so as not to become entangled in a religious dispute.”). Such entanglement here could allow a court to secularize a church term—who may constitute a “minor” under Canon Law—and jeopardize a church’s ability to establish its own rules and regulations for adequately investigating its clergy. *See Brown*, 116 S.W. at 363. In other words, allowing Guerrero’s suit to move forward would threaten the Diocese with civil tort liability for acting in accord with its directive to investigate its clergy or for not conducting that investigation consistent with judicial standards, thereby depriving the Diocese of its “right to construe and administer church laws.” *Westbrook*, 231 S.W.3d at 400 (collecting authorities).

#### IV. Conclusion

Religious groups have a First Amendment right to decide for themselves—free from court interference—



matters of ecclesiastical governance as well as faith and doctrine. *Id.* at 397, 405. Exercising jurisdiction over the underlying case will not only require the trial court to evaluate whether the Lubbock Diocese properly applied Canon Law but will also encroach on the Diocese’s decision to investigate its clergy consistent with its internal policies. Accordingly, we conditionally<sup>3</sup> grant the Lubbock Diocese’s petition for writ of mandamus, vacate the trial court’s order denying the Diocese’s plea to the jurisdiction, and direct the trial court to dismiss the underlying case for want of jurisdiction. Our writ will issue only if the trial court does not comply.

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John P. Devine  
Justice

**OPINION DELIVERED:** June 11, 2021

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<sup>3</sup> Of course, First Amendment rights are not unlimited. See *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008) (citing *United States v. Williams*, 553 U.S. 285 (2008)). We have previously stated that the “[f]reedom to believe may be absolute, but freedom of conduct is not, and conduct even under religious guise remains subject to regulation for the protection of society.” *Pleasant Glade Assembly of God v. Schubert*, 264 S.W.3d 1, 12 (Tex. 2008) (collecting cases); see *Cantwell v. Connecticut*, 310 U.S. 296, 304 (1941) (“In every case the power to regulate must be so exercised as not, in attaining a permissible end, unduly to infringe the protected freedom.”). The Diocese’s investigation and subsequent statements about its investigation, however, do not cross this line.

**IN THE SUPREME COURT OF TEXAS**

NO. 20-0005

DIOCESE OF LUBBOCK, Petitioner

v.

JESUS GUERRERO, Respondent

ON PETITION FOR REVIEW FROM THE  
COURT OF APPEALS FOR THE SEVENTH  
DISTRICT OF TEXAS

**PER CURIAM**

This interlocutory appeal is from a trial court order denying a motion to dismiss under the Texas Citizens Participation Act (TCPA). *See* TEX. CIV. PRAC. & REM CODE § 27.003. The court of appeals considered the appeal as a companion to a mandamus petition also filed by the petitioner, the Diocese of Lubbock. Both relate to the Diocese's defense to claims of defamation and intentional infliction of emotional distress asserted by respondent Jesus Guerrero, a Catholic deacon. The claims arise out of the Diocese's inclusion of Guerrero's name on a list of clergy credibly accused of sexual abuse.

In the trial court, the Diocese filed a plea to the jurisdiction, arguing that the ecclesiastical abstention doctrine barred Guerrero's claims, and followed the plea with a motion to dismiss under the TCPA. The trial court denied both. The Diocese appeals the order denying the motion to dismiss and sought mandamus

relief from the order denying its jurisdictional plea. The court of appeals denied the Diocese's mandamus petition, *In re Diocese of Lubbock*, 592 S.W.3d 196 (Tex. App. – Amarillo 2019, orig. proceeding), and affirmed the trial court's TCPA order with respect to the defamation claim, finding “clear and specific evidence creating a prima facie case on each element of defamation,” *Diocese of Lubbock v. Guerrero*, 591 S.W.3d 244, 253 (Tex. App. – Amarillo 2019).

The Diocese petitioned for review of the court of appeals' judgment under the TCPA and sought mandamus relief in this Court from the trial court's order denying its plea to the jurisdiction. We granted the Diocese's petition for review in Cause No. 20-0005 and consolidated it with the Diocese's petition for writ of mandamus in Cause No. 20-0127 for oral argument.

In our contemporaneously issued opinion in the mandamus proceeding, we agree with the Diocese that the ecclesiastical abstention doctrine deprives the trial court of jurisdiction over Guerrero's suit because it is inextricably intertwined with the Diocese's internal directive to investigate its clergy and would necessarily require the court to evaluate the Diocese's application of Canon Law. *In re Diocese of Lubbock*, No. 20-0127, \_\_\_\_ S.W.3d \_\_\_\_, \_\_\_\_ (Tex. 2021). We accordingly direct the trial court in that proceeding to sustain the Diocese's plea to the jurisdiction and dismiss the underlying case. *Id.* at \_\_\_\_.

Inasmuch as the trial court lacks jurisdiction to proceed in the underlying litigation, the collateral matters under the TCPA asserted in this

interlocutory appeal are moot. “If the trial court lacks subject matter jurisdiction, the appellate court can make no order other than reversing the judgment of the court below and dismissing the cause.” *Garland v. Louton*, 691 S.W.2d 603, 605 (Tex. 1985)(per curiam). The trial court’s underlying interlocutory order and the court of appeals’ judgment are accordingly vacated, and the cause is dismissed.

**OPINION DELIVERED:** June 11, 2021

**IN THE SUPREME COURT OF TEXAS**

NO. 20-0005

DIOCESE OF LUBBOCK, Petitioner

v.

JESUS GUERRERO, Respondent

**MANDATE**

**To the Trial Court of Lubbock County,  
Greetings:**

Before our Supreme Court on June 11, 2021,  
the Cause, upon petition for review, to revise or  
reverse your Judgment.

No. **20-0005** in the Supreme Court of Texas

No. **07-19-00280-CV** in the **Seventh** Court of  
Appeals

No. **2019-534,677** in the **237<sup>th</sup> District Court** of  
**Lubbock** County, Texas, was determined; and  
therein our said Supreme Court entered its judgment  
or order in these words:

THE SUPREME COURT OF TEXAS, having  
heard this cause on petition for review from the Court  
of Appeals for the Seventh District, and having  
considered the appellate record, briefs, and counsels'  
argument, concludes that the court of appeals'  
judgment should be reversed.

IT IS THEREFORE ORDERED, in accordance with the Court's opinion, that:

- 1) The court of appeals' judgment is vacated;
- 2) The cause is dismissed; and
- 3) The Diocese of Lubbock shall recover, and Jesus Guerrero shall pay, the costs incurred in this Court and in the court of appeals.

Copies of this judgment and the Court's opinion are certified to the Court of Appeals for the Seventh District and to the 237<sup>th</sup> District Court of Lubbock County, Texas, for observance.

Wherefore we command you to observe the order of our said Supreme Court in this behalf, and in all things to have recognized, obeyed, and executed.

BY ORDER OF THE SUPREME COURT OF  
THE STATE OF TEXAS,



with the seal thereof annexed, at the City of Austin, this the 16<sup>th</sup> day of July, 2021.

Blake A. Hawthorne, Clerk

s/ Blake A. Hawthorne

By Monica Zamarripa, Deputy Clerk

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**IN THE SUPREME COURT OF TEXAS**

NO. 20-0005

DIOCESE OF LUBBOCK, Petitioner

v.

JESUS GUERRERO, Respondent

ON PETITION FOR REVIEW FROM THE  
COURT OF APPEALS FOR THE SEVENTH  
DISTRICT OF TEXAS

**JUDGMENT**

THE SUPREME COURT OF TEXAS, having heard this cause on petition for review from the Court of Appeals for the Seventh District, and having considered the appellate record, briefs, and counsels' argument, concludes that the court of appeals' judgment should be reversed.

IT IS THEREFORE ORDERED, in accordance with the Court's opinion, that:

- 1) The court of appeals' judgment is vacated;
- 2) The cause is dismissed; and
- 3) The Diocese of Lubbock shall recover, and Jesus Guerrero shall pay, the costs incurred in this Court and in the court of appeals.

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Copies of this judgment and the Court's opinion are certified to the Court of Appeals for the Seventh District and to the 237<sup>th</sup> District Court of Lubbock County, Texas, for observance.

Opinion of the Court delivered Per Curiam.

June 11, 2021

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IN THE SUPREME COURT OF TEXAS

NO. 20-0127

IN RE DIOCESE OF LUBBOCK, RELATOR

ON PETITION FOR WRIT OF MANDAMUS

JUSTICE BOYD, dissenting.

The Catholic Church has publicly confessed that a “culture of abuse” existed within its communities.<sup>1</sup> With “sorrow and shame,” Pope Francis personally acknowledged “the atrocities perpetrated by consecrated persons, clerics, and all those entrusted with the mission of watching over and caring for those most vulnerable.”<sup>2</sup> He also conceded that, beyond the abuse itself, the victims’ pain “was long ignored, kept quiet or silenced.”<sup>3</sup>

But now, the church has pledged to publicly “condemn these atrocities and join forces in uprooting

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<sup>1</sup> *Letter of His Holiness Pope Francis to the People of God*, THE HOLY SEE (Aug. 20, 2018), [http://www.vatican.va/content/francesco/en/letters/2018/documents/papa-francesco\\_20180820\\_lettera-popolo-didio.html](http://www.vatican.va/content/francesco/en/letters/2018/documents/papa-francesco_20180820_lettera-popolo-didio.html).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*; cf. Heather McAdams, *Holding the Catholic Church Responsible on an International Level: The Feasibility of Taking High-Ranking Officials to the International Criminal Court*, 53 N.Y.U. J. INT’L L. & POL. 229, 230 (2020) (describing “the Catholic Church’s history of covering up the sexual abuse of minors committed by its clergy”).

this culture of death.”<sup>4</sup> It has promised to extend “an outstretched hand” to the victims “and rescue them from their pain.”<sup>5</sup> And it has committed itself to a “penitential openness that can allow [the church] to be renewed from within.”<sup>6</sup> Unfortunately, that commitment to “openness” led to the filing of this lawsuit.

Consistent with the Holy Father’s commitment, the United States Conference of Catholic Bishops issued a Charter for the Protection of Children and Young People, requiring that all U.S. Catholic Dioceses “be open and transparent in communicating with the public about sexual abuse of minors by clergy within the confines of respect for the privacy and the reputation of the individuals involved.”<sup>7</sup> Pursuant to this directive, the Texas Dioceses undertook to investigate all allegations of sexual abuse of a minor by a clergy member and to publish lists of all such persons against whom a “credible allegation” had been made. When the Lubbock Diocese produced its list, entitled “Names of All Clergy with a Credible Allegation of Sexual Abuse of a Minor,” it posted the list on its public website,

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<sup>4</sup> *Letter of His Holiness Pope Francis to the People of God*, *supra* note 1.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Charter for the Protection of Children and Young People*, U.S. CONF. OF CATH. BISHOPS (June 2018), <https://www.usccb.org/issues-and-action/child-and-youth-protection/upload/Charter-for-the-Protection-of-Children-and-Young-People-2018-final.pdf>.

issued a press release saying the list was issued as part of the church's effort to "protect *children* from sexual abuse," and provided an interview about the list to a Lubbock news station in which the Diocese's chancellor assured the public that the church is safe "for *children*." [Emphases added.]

Jesus Guerrero, an ordained deacon, asked the Lubbock Diocese to remove his name from the list. When the Diocese refused, Guerrero filed this suit for defamation, contending that he has never been accused—credibly or otherwise—of sexually abusing a child. The Diocese does not disagree, but it asserts that, under Catholic Canon Law, the word "minor" is defined to include adults "deemed vulnerable due to a health or mental condition." According to the Diocese, Guerrero was accused—many years before the Diocese published the list—of engaging in "sexual misconduct" with an adult woman who had a history of mental and emotional illness, who "may not have been on her medications at the time of the various instances which were witnessed." The Diocese, however, did not provide its unique definition of the term "minor" when it published its list and other statements referring to abuse of "children" to the general public.

Under these circumstances, the Court's desire to protect the Diocese against anything that might inhibit its commitment to "openness" is understandable. But the rule the Court announces today—which no other court has ever announced before—is as unwise as it is unsupported by the constitutional provisions on which the Court relies. The First Amendment indisputably prohibits courts from interfering with a religious organization's

internal activities and operations, including investigations and disciplinary actions involving its clergy and members. But courts throughout the country, both federal and state (including several state supreme courts) have consistently agreed that the First Amendment does not prohibit courts from hearing a defamation claim against a religious organization or official when (1) the claim is based on statements made *to the general public* and (2) the courts can resolve the claim on strictly *secular grounds*. In rejecting this holding, the Court refuses to even address this national consensus in the caselaw, much less identify any court that has ever held otherwise.

Unlike the federal Constitution, the Texas Constitution expressly guarantees not only the freedom of speech, but also that the law will hold people responsible “for the abuse of that privilege.”<sup>8</sup> Our courts must stand as the vanguard of enforcement for *both* those guarantees. However desirable the outcome of today’s decision may be in this particular case, the precedential effect of the Court’s holding will apply to every group that asserts a religious identity and will immunize defamatory statements publicized under far less sympathetic circumstances. And after today’s decision, the First Amendment now means something different in Texas than it means throughout the rest of the country. Of course, that cannot be correct. Because I agree with all the courts around the country that have held that the First Amendment does not prohibit courts from hearing a defamation claim against a religious organization

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<sup>8</sup> TEX. CONST. art. I § 8.

when the claim involves statements made to the general public and courts can resolve the claim on strictly secular grounds, I respectfully dissent.

## I.

### The Ecclesiastical-Abstention Doctrine

The First Amendment to the United States Constitution famously prohibits Congress from making any “law respecting an establishment of religion, or prohibiting the free exercise thereof.” U.S. CONST. amend. I. The Fourteenth Amendment imposes this restriction on the states. *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem’l Presbyterian Church*, 393 U.S. 440, 441 (1969). “The free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires.” *Emp. Div., Dep’t of Hum. Res. of Or. v. Smith*, 494 U.S. 872, 877 (1990). The provision prohibiting the establishment of religion means, among other things, that the government may not interfere with a religious organization’s “ecclesiastical decisions.” *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 189 (2012).

As a result, courts may not decide “quintessentially religious controversies,” *Serbian E. Orthodox Diocese for U.S. & Can. v. Milivojevich*, 426 U.S. 696, 720 (1976), or “cases of ecclesiastical cognizance,” *Watson v. Jones*, 80 U.S. 679, 729 (1871). Because secular law “knows no heresy, and is committed to the support of no dogma, the establishment of no sect,” courts must abstain from hearing a claim that is “strictly and purely ecclesiastical in its character.” *Id.* at 728, 733. This

includes claims that require courts to evaluate and assess “the faith and mission of the church,” *Hosanna-Tabor*, 565 U.S. at 190, the “centrality of particular beliefs or practices to a faith,” *Hernandez v. Comm’r*, 490 U.S. 680, 699 (1989), matters of “religious law and polity,” *Milivojeovich*, 426 U.S. at 709, “religious doctrine and practice,” *Mary Elizabeth Blue Hull*, 393 U.S. at 449, matters of “faith and doctrine,” *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952), or “questions of discipline, or of faith, or ecclesiastical rule, custom, or law,” *Watson*, 80 U.S. at 727.

For example, courts cannot interfere with a religious group’s choices regarding its “internal governance,” including its decision “to fire one of its ministers.” *Hosanna-Tabor*, 565 U.S. at 181, 188. Courts cannot resolve “church property disputes on the basis of religious doctrine and practice.” *Jones v. Wolf*, 443 U.S. 595, 602 (1979). They cannot hear “church disputes over church polity and church administration,” or claims involving a religious organization’s “internal discipline and government.” *Milivojeovich*, 426 U.S. at 710, 724. Nor can they decide whether a church’s actions “depart substantially from prior doctrine,” *Mary Elizabeth Blue Hull*, 393 U.S. at 450, resolve a “theological controversy,” or determine the “conformity of the members of the church to the standard of morals required of them,” *Watson*, 80 U.S. at 734.<sup>9</sup>

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<sup>9</sup> Courts have often treated this “ecclesiastical abstention” or “religious autonomy” doctrine as a constitutional bar to the courts’ jurisdiction, as the Court does in this case today. *Ante* at. In *Hosanna-Tabor*, however, the United

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States Supreme Court explained that the “ministerial exception” it recognized in that case operates “not [as] a jurisdictional bar” that affects the court’s “power to hear [the] case,” but “as an affirmative defense to an otherwise cognizable claim.” 565 U.S. at 195 n.4 (quoting *Morrison v. Nat’l Austl. Bank Ltd.*, 561 U.S. 247, 254 (2010)). Nevertheless, this Court holds today that the bar remains jurisdictional, attempting to distinguish *Hosanna-Tabor* on the ground that the “ministerial exception” is “independent but related to” the ecclesiastical-abstention doctrine. *Ante* at n.1.

The Supreme Court’s decisions do not support that distinction. The Supreme Court used the “ministerial exception” label in *Hosanna-Tabor* to refer to a specific type of ecclesiastical claim the First Amendment prevents courts from addressing—namely, a “minister’s” claim that a religious organization for which the minister worked violated employment-discrimination statutes. *Hosanna-Tabor*, 565 U.S. at 176–77, 188. As JUSTICE THOMAS later noted, the label is actually a “misnomer” because “[t]he First Amendment’s protection of religious organizations’ employment decisions” sometimes extends “to the laity” as well as “to members of the clergy.” *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2069 n.1 (2020) (THOMAS, J., concurring). In any event, the Court recognized the “ministerial exception” in *Hosanna-Tabor* both because the First Amendment’s Free Exercise Clause “precludes application of [employment-discrimination statutes] to claims concerning the employment relationship between a religious institution and its ministers,” and because the First Amendment’s Establishment Clause “prohibits government involvement in such *ecclesiastical decisions*.” *Hosanna-Tabor*, 565 U.S. at 188–89 (emphasis added). In other words, the Supreme Court’s decision in *Hosanna-Tabor* was based on the same constitutional provisions and the same application of those provisions as all its other decisions applying the ecclesiastical-abstention (or religious-autonomy) doctrine.

The Supreme Court confirmed this in *Our Lady of Guadalupe*, explaining that the “constitutional foundation for [its] holding [in *Hosanna-Tabor*] was the *general principle of church autonomy* to which we have already referred: independence in matters of faith and doctrine and in closely linked matters of

But the First Amendment’s bar against courts hearing ecclesiastical disputes is not without its limits. Just as the Free Exercise Clause does not excuse religiously motivated citizens from “compliance with an otherwise valid law prohibiting

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internal government.” *Our Lady of Guadalupe*, 140 S. Ct. at 2061 (emphasis added). It further emphasized that the precedent on which the Court relied in *Hosanna-Tabor* “drew on this broad principle, and none was exclusively concerned with the selection or supervision of clergy.” *Id.* Applying this broad “understanding” of the First Amendment, the Court held that the defendants in *Our Lady of Guadalupe* qualified for the same “exemption” the Court had recognized in *Hosanna-Tabor*. *Id.* at 2066.

This Court’s suggestion today that the Supreme Court in *Our Lady of Guadalupe* somehow backed off of its jurisdictional analysis in *Hosanna-Tabor*, *see ante* at \_\_\_ n.33, is simply unsupported by either of those decisions. Consistent with its holding in *Hosanna-Tabor*, the Supreme Court never mentioned “jurisdiction” in *Our Lady of Guadalupe*. Instead of dismissing the claims in that case for want of jurisdiction, it reversed the appellate courts’ decisions (which themselves had reversed the district courts’ summary-judgment orders) and remanded the cases to those courts for “proceedings consistent with this opinion.” *Our Lady of Guadalupe*, 140 S. Ct. at 2069. In other words, it acted consistent with its holding in *Hosanna-Tabor* that the ecclesiastical-abstention doctrine is “not a jurisdictional bar,” but “an affirmative defense to an otherwise cognizable claim.” *Hosanna-Tabor*, 565 U.S. at 195 n.4.

This case comes to us as a petition for writ of mandamus, urging us to order the trial court to grant the Lubbock Diocese’s plea to the jurisdiction. The Court grants that relief, *see ante* at , even though the Supreme Court held in *Hosanna-Tabor* and confirmed in *Our Lady of Guadalupe* that the First Amendment’s prohibition against courts hearing claims involving ecclesiastical issues establishes an affirmative defense, not a jurisdictional bar. For this additional reason, I cannot join the Court’s opinion or disposition in this case.



conduct that the State is free to regulate,” *Smith*, 494 U.S. at 879, the Establishment Clause does not prevent courts from deciding disputes involving religious organizations by applying “neutral principles of law,” *Jones*, 443 U.S. at 604; *Mary Elizabeth Blue Hull*, 393 U.S. at 449.

## II. Texas Precedent

This Court has addressed and applied the ecclesiastical-abstention doctrine in a handful of cases. Initially, we held in a pair of decisions that the First Amendment prevented the courts from hearing tort claims against a religious organization when the resolution of the claims would require the courts to interfere with internal religious requirements and conduct. In *Westbrook v. Penley*, 231 S.W.3d 389 (Tex. 2007), a former church member sued the church’s pastor for negligence, breach of fiduciary duty, and intentional infliction of emotional distress<sup>10</sup> after the pastor disclosed the member’s confession of an extra-marital affair to the church’s elders, who—with the pastor’s aid—reported the affair in a letter to the church’s members<sup>11</sup> and called on the members to “break fellowship” with her. *Id.* at 393–94. The former member argued that because the pastor was also a

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<sup>10</sup> The former member “originally asserted but later abandoned” a claim for defamation. *Westbrook*, 231 S.W.3d at 396.

<sup>11</sup> This “letter admonished the congregation to treat the matter as a ‘members-only issue, *not to be shared with those outside [the congregation].*’” *Id.* at 393 (emphasis added).

state-licensed professional counselor and she disclosed the affair to him during a “secular” counseling session, the courts could hear and decide her claims based on neutral principles without deciding ecclesiastical issues. *Id.* at 396, 399. We disagreed, holding that even assuming the counseling session was “purely secular in nature,” the pastor’s state-imposed duty of confidentiality conflicted with his church-imposed duty to disclose her conduct to the elders and other church members. *Id.* at 392. Although we agreed “that the First Amendment does not necessarily bar all claims that may touch upon religious conduct,” *id.* at 396, we concluded that “parsing” the pastor’s conflicting roles and duties “would unconstitutionally entangle the court in matters of church governance and impinge on the core religious function of church discipline,” *id.* at 391–92.

The following year, we held in *Pleasant Glade Assembly of God v. Schubert*, 264 S.W.3d 1 (Tex. 2008), that the courts could not hear a teenage church member’s claims that the church had forcibly restrained her while “laying hands” on her and praying over her during a “spiritually charged” youth-group gathering. *Id.* at 3, 8. The teenager and her parents sued the church, its pastors, and some members, seeking damages for “mental, emotional and psychological” injuries. *Id.* at 5.<sup>12</sup> We held that the claims were not cognizable because, “[a]lthough the Free Exercise Clause does not categorically insulate

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<sup>12</sup> The plaintiffs asserted claims for negligence, gross negligence, professional negligence, intentional infliction of emotional distress, false imprisonment, assault, battery, loss of consortium, and child abuse. 264 S.W.3d at 5.

religious conduct from judicial scrutiny, it prohibits courts from deciding issues of religious doctrine.” *Id.* at 11. Because the resolution of the claims would require inquiry into “church beliefs on demonic possession,” we concluded that “the imposition of tort liability for engaging in religious activity to which the church members adhere would have an unconstitutional ‘chilling effect’ by compelling the church to abandon core principles of its religious beliefs.” *Id.* at 10–11.

More recently, we held in a pair of cases that the First Amendment does not prevent courts from hearing and resolving disputes over ownership of church property when they can resolve those disputes based on “neutral principles of law.” In *Masterson v. Diocese of Northwest Texas*, 422 S.W.3d 594 (Tex. 2013), we adopted the “neutral principles” standard for resolving church-property disputes because that standard best balances the courts’ “constitutional duty to decide disputes within their jurisdiction while still respecting” the First Amendment’s limitations. *Id.* at 596. We acknowledged that courts cannot “decide questions of an ecclesiastical or inherently religious nature, so as to those questions they must defer to decisions of appropriate ecclesiastical decision makers.” *Id.* at 605–06. But because courts are “[duty-]bound to exercise jurisdiction vested in them by the Texas Constitution and cannot delegate their judicial prerogative where jurisdiction exists,” we held that courts must “apply neutral principles of law to non-ecclesiastical issues involving religious entities in the same manner as they apply those principles to other entities and issues.” *Id.* at 606.

Applying *Masterson*, we held most recently that the ecclesiastical-abstention doctrine did not prohibit courts from deciding whether the Episcopal Diocese of Fort Worth or the national Episcopal Church from which the Diocese had split owned church property within the Fort Worth area. *Episcopal Diocese of Fort Worth v. Episcopal Church*, 602 S.W.3d 417, 420 (Tex. 2020), *cert. denied sub nom. All Saints’ Episcopal Church (Fort Worth) v. Episcopal Diocese of Fort Worth*, No. 20-534, 2021 WL 666391 (U.S. Feb. 22, 2021), *and cert. denied*, No. 20-536, 2021 WL 666393 (U.S. Feb. 22, 2021). While acknowledging that courts cannot make “ecclesiastical determinations” or “resolve disputes turning on tenets of faith,” and thus could not decide “which faction is the true diocese loyal to the church and which congregants are in good standing,” *id.* at 432–33, 435, we concluded that courts could resolve the property-ownership issue because, by “applying neutral principles to the organizational documents, the question of property ownership is not entwined with or settled by [ecclesiastical] determinations.” *Id.* at 433.

### III. Defamation Claims

Neither this Court nor the United States Supreme Court has addressed whether or when the ecclesiastical-abstention doctrine applies to defamation claims. *See Hosanna-Tabor*, 565 U.S. at 196 (expressing “no view on whether” the doctrine bars actions alleging “tortious conduct by . . . religious employers”). Many other courts have, however, and they have consistently agreed that the doctrine does not bar defamation claims that (1) are based on

statements made to the general public, outside the religious organization itself, and (2) can be resolved by applying neutral principles, even when the statements were published by a church, its clergy, or another member of a religious organization.

### **A. Statements made to the general public**

When deciding that the First Amendment bars courts from hearing a defamation claim against a religious organization, numerous courts—including two state supreme courts—specifically reasoned that the bar applied because the statements were made only internally, solely to the organization’s leaders or members. In *Hiles v. Episcopal Diocese of Massachusetts*, 773 N.E.2d 929 (Mass. 2002), for example, the Supreme Judicial Court of Massachusetts held that an Episcopalian priest could not sue a parishioner for defamation based on a letter the parishioner sent to the church’s bishop, in which she confessed to having an extended sexual relationship with the priest, in part because the letter “was published solely in a canonical context” and used solely “to invoke the Church’s internal disciplinary procedures.” *Id.* at 936. The court specifically noted that its analysis was “predicated on the fact that the only defamatory publication allegedly made by [the parishioner] was made to the Church itself, within its internal disciplinary procedure,” and it explained that the “absolute First Amendment protection for statements made by a Church member in an internal church disciplinary proceeding would *not* apply to statements made or repeated outside that context.” *Id.* at 937 n.12 (emphasis added).

Similarly, in *Pfeil v. St. Matthews Evangelical Lutheran Church of the Unaltered Augsburg Confession of Worthington*, 877 N.W.2d 528 (Minn. 2016), the Minnesota Supreme Court dismissed two excommunicated parishioners’ defamation suit against their former church and pastors because “[a]ll of the statements on which the [parishioners] base their claims occurred during church disciplinary proceedings, and [the First Amendment] prohibits civil courts from inquiring into any statements made during the course of a church disciplinary proceeding.” *Id.* at 536. Like the Massachusetts court in *Hiles*, the Minnesota court specifically noted that it would “be troubled . . . if the statements were disseminated to individuals *outside* of the religious organization.” *Id.* at 540 (emphasis added). But because the ministers “only disseminated those statements to members of the congregation,” the court held that the First Amendment barred the defamation claim. *Id.* at 541. Numerous other courts, including our own state’s courts of appeals, have also expressly noted, when holding that the ecclesiastical-abstention doctrine barred a defamation claim, that the alleged defamatory statements were published only to members of the religious organization as part of the organization’s internal investigatory or disciplinary process. *See, e.g., Yaggie v. Ind.-Ky. Synod, Evangelical Lutheran Church in Am.*, 64 F.3d 664 (6th Cir. 1995) (per curiam) (unpublished table decision) (noting that “the alleged defamatory statements were made in connection with the mediation process and strictly within the confines of the church”); *Hubbard v. J Message Grp. Corp.*, 325 F. Supp. 3d 1198, 1219 (D.N.M. 2018) (mem. op.) (“[T]o the extent that the allegations in the Complaint suggest that the allegedly

defamatory statements were published exclusively to the [religious organization's] membership, this fact strengthens the Court's conclusion that Plaintiff's claims, having occurred in the context of an ecclesiastical dispute with [the religious organization], are barred by the First Amendment."); *Jennison v. Prasifka*, 391 S.W.3d 660, 667–68 (Tex. App.—Dallas 2013, no pet.) (noting that the “only defamatory statements allegedly made by [the defendant] were made to the church itself in connection with the church's disciplinary process,” and plaintiff made “no allegation the allegedly defamatory statements were made in any other forum”); *Stepek v. Doe*, 910 N.E.2d 655, 667 (Ill. App. Ct. 2009) (noting that defamation claim was based on statements that “were published solely within the Catholic Church's internal disciplinary proceedings”); *Patton v. Jones*, 212 S.W.3d 541, 555 (Tex. App.—Austin 2006, pet. denied) (holding First Amendment barred minister's defamation claim in part because “the alleged ‘publication’ [was] confined within the church”); *Heard v. Johnson*, 810 A.2d 871, 885 (D.C. 2002) (holding ecclesiastical-abstention doctrine “extend[s] to defamation claims, when: (1) such a claim flows entirely from an employment dispute between a church and its pastor so that consideration of the claim in isolation from the church's decision as to the pastor is not practical, (2) *the alleged ‘publication’ is confined within the church*, and (3) there are no unusual or egregious circumstances”) (emphasis added); *Schoenhals v. Mains*, 504 N.W.2d 233, 236 (Minn. Ct. App. 1993) (“[W]e believe that the fact that the letter was disseminated only to other members of the Church strengthens the conclusion that Mains' statements involved and were limited to Church discipline.”).

Under this same reasoning, however, numerous other courts have held that the First Amendment does *not* prohibit courts from hearing a defamation claim based on statements communicated beyond the religious organization to members of the public. In *Kliebenstein v. Iowa Conference of United Methodist Church*, 663 N.W.2d 404 (Iowa 2003), for example, the Iowa Supreme Court held that the First Amendment did not bar a church member's defamation claim based on a letter that was "mailed not only to members of the congregation but also to other persons living in the Shell Rock community." *Id.* at 405. The court observed that courts could not hear the claim "had the matter been divulged solely to the members of" the church, but "if publication solely to church members justifies ecclesiastical status for otherwise defamatory communications, proof of publication to *non-church* members arguably supports the opposite conclusion." *Id.* at 406–07.

Similarly, in *Turner v. Church of Jesus Christ of Latter-Day Saints*, 18 S.W.3d 877 (Tex. App.—Dallas 2000, pet. denied), a decision this Court declined to review, the Dallas Court of Appeals held that the First Amendment did not bar a church member's defamation claim arising from the church's disclosure of information regarding his mental condition outside the church, including to his grandparents. *Id.* at 896. The court explained that the church's external disclosure of the information did not concern "internal policies of the Church or matters of faith or ecclesiastical doctrine," and the court's resolution of the claim based on that external disclosure would not "actively involve the government



in the Church's religious activities or excessively entangle the government with religion." *Id.*

And in *Lipscombe v. Crudup*, 888 A.2d 1171 (D.C. 2005), the D.C. court of appeals held that the First Amendment did not bar a church member's defamation claim against the church's pastor, in part because the member's allegation "that the statement was made 'to the public in an open meeting' sufficiently alleged that others besides church members were present," and his affidavit "asserted explicitly that '[t]he public gathering was not part of any church service and members from the public, including accountants, heard the Statement." *Id.* at 1173 & n.2.

Numerous other courts, including Texas courts of appeals, have adopted this same reasoning. *See, e.g., Hadnot v. Shaw*, 826 P.2d 978, 985 (Okla. 1992) (noting that statements contained in letter were not defamatory, even assuming "the lay leader communicated the letters' contents outside the Church"); *Kelly v. St. Luke Cmty. United Methodist Church*, No. 05-16-01171-CV, 2018 WL 654907, at \*1 (Tex. App.—Dallas, Feb. 1, 2018, pet. denied) (mem. op.) (holding ecclesiastical-abstention doctrine did not bar defamation claim "respecting statements allegedly published to persons outside the church"); *Ausley v. Shaw*, 193 S.W.3d 892, 896 (Tenn. Ct. App. 2005) (holding First Amendment did not bar minister's slander claim because statements "were made in the presence of Church members, local law enforcement, and members of the surrounding community").

Here, Guerrero alleges—and the Lubbock Diocese does not dispute—that the Diocese publicized the list that included his name among those credibly accused of sexually abusing “minors” (along with statements referring to the safety of “children”) not merely to and within the church, but to the general public through the church’s website, a press release, and an interview with local media. By choosing to broadcast the statements beyond the church and involve the general public in the church’s disciplinary procedures, the Diocese altered the nature of the constitutional concerns. *See, e.g., Pleasant Glade Assembly of God*, 264 S.W.3d at 12 (noting that “religious practices that might offend the rights or sensibilities of a non-believer outside the church are entitled to greater latitude when applied to an adherent within the church”). At that point, the church’s conduct was no longer “strictly and purely ecclesiastical in its character,” *Watson*, 80 U.S. at 733, and Guerrero’s complaint became more than a “quintessentially religious controvers[y]” involving only the church’s “*internal* discipline and government,” *Milivojeovich*, 426 U.S. at 720, 724 (emphasis added).

The Diocese’s assertion that its religious teachings required it to publicly disclose the list in compliance with Pope Francis’s commitment to “openness” does not alter this conclusion. Nor does the Court’s assertion that Guerrero’s claim is “inextricably intertwined” with the church’s directive that the Diocese internally investigate its clergy. *Ante* at \_\_\_. The Court asserts that the church’s decision to publish a list of those credibly accused of abusing minors cannot be severed from its decision to

investigate its clergy, *ante* at \_\_, but Guerrero's defamation claim does not complain about—and a jury would not be required to evaluate—either of those actions. The Diocese investigated allegations against Guerrero years before the church published the list, and Guerrero has never complained about the church's decision to conduct that investigation. Guerrero's defamation claim does not challenge that investigation or the Diocese's decision to publicize the list; he complains of the Diocese's inclusion of his name on the list, which he asserts falsely defames him by communicating to the public that he had been credibly accused of sexually abusing a “minor.”

The Diocese's—indeed, the entire church's—commitment to public transparency as it seeks to leave its “atrocities” behind is both understandable and laudable. But the issue here is not whether the Diocese should have investigated Guerrero, internally disciplined him, or even published a list of those who had been accused of sexual misconduct. Nor does Guerrero complain that the Diocese concluded *internally* that he had been accused of sexually abusing a “minor,” as Canon Law defines that term. His complaint is that the Diocese should not have broadcast to the general public an allegation that he had been credibly accused of sexually abusing a “minor.”

Exercising jurisdiction over Guerrero's claim would not second-guess or threaten the church's (or any other religious organization's) decision to investigate its clergy, finding of misconduct by a clergy member, or imposition of internal disciplinary measures against a member within the church's

religious activities. What it would threaten is a religious organization's ability to make false and defamatory statements about its clergy or members to the general public, outside of the organization's internal operations. The issue here is simply whether the First Amendment prohibits courts from hearing a claim that the information distributed to the general public in and with the Diocese's list falsely defamed Guerrero. Like all the other courts around the country, I conclude it does not. "It is one thing to say that churches must be free of governmental interference to conduct matters of *internal discipline and organization*, even when those matters touch upon the reputations of those effected." *Hayden v. Schulte*, 701 So. 2d 1354, 1356–57 (La. Ct. App. 1997) (emphasis added). But it is "quite another to say that churches have the unfettered right to make unsubstantiated statements of an essentially secular nature to the media destructive of a priest's character." *Id.* at 1357. By extending its internal disciplinary procedures and beliefs into the public arena, the Diocese subjected itself to the public laws that govern that realm.<sup>13</sup>

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<sup>13</sup> The Court suggests in passing that the First Amendment bars this suit because the Free Exercise Clause permits a religious organization to "engage freely in ecclesiastical discussions with more than just its members." *Ante* at \_\_\_\_ (citing *Bryce v. Episcopal Church in the Diocese of Colo.*, 289 F.3d 648, 658 (10th Cir. 2002)). According to the Court, a religious organization's decision to "enter the public square" does not "revoke ecclesiastical protection." *Ante* at \_\_\_\_ (quoting *Whole Woman's Health v. Smith*, 896 F.3d 362, 372 (5th Cir. 2018)). This argument misrepresents the decisions in both those cases. In *Bryce*, a minister and her same-sex partner alleged that the minister's church's leaders and members made "sexually harassing remarks" in letters between the senior minister and

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“other church leaders” and “at a series of church meetings.” 289 F.3d at 657. Applying the ecclesiastical-abstention doctrine, the court held that the First Amendment barred the minister’s and her partner’s claims because the letters “discussed an internal church personnel matter and the doctrinal reasons for [the] proposed personnel decision,” and the church meetings “facilitated religious communication and religious dialogue between [the senior] minister and his parishioners.” *Id.* at 658. In stating that the church could “engage freely in ecclesiastical discussions with members and non-members,” the court was specifically referring to the fact that the minister’s partner, who was not a member of the church, was present at the meetings. *Id.* The court concluded that the First Amendment also barred her claims because she “voluntarily attended” the meetings and “voluntarily became part of [the church’s] internal dialogue on homosexuality and [the minister’s] employment.” *Id.* *Bryce* did not involve a church’s broadcast of allegedly defamatory statements to the general public or to “non-members” who had not voluntarily chosen to participate in a church’s *internal* doctrinal discussions.

In *Whole Woman’s Health*, the plaintiff, who sued to challenge a state statute and regulations that imposed restrictions on the disposal of fetal remains, sought through a third-party discovery subpoena to force the Texas Conference of Catholic Bishops (a non-party) to disclose its *internal* communications regarding public testimony it provided in support of the restrictions. 896 F.3d at 365–66. The court quashed the subpoena, holding that by “engag[ing] in activity in the public square,” the Conference did not forfeit the First Amendment’s protection of the Conference’s “inner workings” and “internal communications.” *Id.* at 372. The court relied not on the First Amendment’s religion clauses or the ecclesiastical-abstention doctrine, but on the clause that protects the “freedom to associate,” which protects the internal deliberations not just of religious organizations but of “citizens’ groups” and all other organizations that participate in the public square. *Id.* Neither *Bryce* nor *Whole Woman’s Health* held—or even discussed whether—a religious organization’s right to engage in the public arena gives it the right to falsely defame others within that arena. *See id.*

## B. Neutral principles

In addition to barring court intrusions into a church's "internal" operations and proceedings, the First Amendment precludes judicial inquiries into a religious organization's "particular beliefs," *Hernandez*, 490 U.S. at 699, matters of "religious law," *Milivojeovich*, 426 U.S. at 709, and issues of "religious doctrine," *Mary Elizabeth Blue Hull*, 393 U.S. at 449. "The free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires," *Smith*, 494 U.S. at 877, and courts have no business evaluating the soundness of a church's doctrinal teaching or whether one has conformed to or strayed from those teachings, *Mary Elizabeth Blue Hull*, 393 U.S. at 450; *Watson*, 80 U.S. at 733–34.

Because of this, courts have held that the First Amendment bars a defamation claim when a statement's defamatory nature or its truth or falsity depends upon the interpretation and application of religious doctrine and teachings. In *O'Connor v. Diocese of Honolulu*, 885 P.2d 361 (Haw. 1994), for example, a member of the Catholic Church who published a newspaper that was critical of the local Diocese and Bishop sued them both after the church excommunicated him, asserting that they defamed him by publicizing allegations that he had committed "criminal penal ecclesiastical" violations," created a "schism," misrepresented the Catholic faith "against the warnings of the Holy See," was a "fanatic[]" who "came from a neolithic mind frame," was disloyal to

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the Pope, and had “caused others to suffer the loss of their immortal souls.” *Id.* at 367– 68. The Hawaii Supreme Court held that the First Amendment barred courts from hearing these claims because, “to determine the truth or falsity of the statements, a state court would have to inquire into church teachings and doctrine” and determine “doctrinal correctness” by “analyzing church law.” *Id.* at 368.

Other courts have reached the same conclusion when faced with similar circumstances that required them to evaluate religious and doctrinal issues to resolve a defamation claim. *See, e.g., Pfeil*, 877 N.W.2d at 538 (observing that statements “cannot serve as the basis for a defamation claim” when “adjudicating the truth or falsity of the statements would require the court to consider and interpret matters of church doctrine”); *Howard v. Covenant Apostolic Church, Inc.*, 705 N.E.2d 385, 389 (Ohio Ct. App. 1997) (holding First Amendment barred defamation claim when its resolution would require “biblical interpretation” and a determination of plaintiff’s “conformity . . . to the standard of morals required of him by his church,” matters that are “inextricably intertwined with ecclesiastical or religious issues over which secular courts have no jurisdiction”); *Schoenhals*, 504 N.W.2d at 236 (“Since examination of the truth of [the defendants]’ statements would require an impermissible inquiry into Church doctrine and discipline, the district court did not err in concluding that the defamation claim is precluded by the First Amendment.”).

But as numerous courts—including at least six other state supreme courts—have recognized, the First

Amendment does not bar a defamation claim, even if it arises from a religious context, when courts can resolve the claim by applying only non-religious, neutral principles. In *Kliebenstein*, for example, the Iowa Supreme Court held that the plaintiff could pursue her claim that a church defamed her by publicizing an accusation that she had the “spirit of Satan,” because the phrase “spirit of Satan” has “a secular, as well as sectarian, meaning.” 663 N.W.2d at 405, 408. Because the phrase has a secular meaning that a jury could evaluate “without resort to theological reflection,” the court concluded that the ecclesiastical-abstention doctrine did not apply. *Id.* at 405, 407.

Similarly, in *Bowie v. Murphy*, 624 S.E.2d 74 (Va. 2006), the Virginia Supreme Court held that the First Amendment did not bar a church deacon’s claim that the church’s minister and other members defamed him by publicizing statements that he had “assaulted” another member. *Id.* at 76–77, 79–80. The court reasoned that although courts could not consider claims challenging the church’s decisions involving its internal governance, they could evaluate the defendants’ “statements for their veracity and the impact they had on [the deacon’s] reputation the same as if the statements were made in any other, non-religious context.” *Id.* at 79.

And in *Banks v. St. Matthew Baptist Church*, 750 S.E.2d 605 (S.C. 2013), the South Carolina Supreme Court held that the First Amendment did not bar defamation claims asserted by a church’s trustees against the church’s pastor, who allegedly accused the trustees of mismanaging (and, impliedly, stealing) the church’s property and of lying to the



pastor about their conduct. *Id.* at 606–07. The court reasoned that the bar would apply if, for example, the pastor had accused the trustees of being “sinners,” of being “not true followers of God,” or of violating church law. *Id.* at 608. But because courts could determine whether the pastor actually made the statements and whether they harmed the trustees by applying “neutral principles,” without requiring “any inquiry into or resolution of religious law, principle, doctrine, discipline, custom, or administration,” the court held that the First Amendment did not bar the claim. *Id.* at 607–08.

Numerous other courts have consistently agreed with this reasoning. *See, e.g., McRaney v. N. Am. Mission Bd. of the S. Baptist Convention, Inc.*, 966 F.3d 346, 349 (5th Cir. 2020) (holding First Amendment did not bar defamation claim brought by executive director of church’s local mission board against church’s national mission board, based on alleged statements accusing director of refusing to meet with national board’s president, because resolution of claim would not “require the court to address purely ecclesiastical questions”); *Drevlow v. Lutheran Church*, 991 F.2d 468, 471–72 (8th Cir. 1993) (holding First Amendment did not bar minister’s libel claim against church based on false statements church allegedly made about minister’s wife, because resolution of claim would not “definitely involve the district court in an impermissible inquiry into the Synod’s bylaws or religious beliefs”); *Tubra v. Cooke*, 225 P.3d 862, 864 (Or. 2010) (holding First Amendment did not bar pastor’s defamation claim based on church leaders’ statements that minister “had misappropriated church funds and was

dishonest during his time as pastor”); *Connor v. Archdiocese of Phila.*, 975 A.2d 1084, 1107 (Pa. 2009) (holding First Amendment did not bar parents’ defamation claim based on parochial school’s alleged statements that child “brought a weapon to school” because “this is not a case in which religious authority would be directly relevant to a party’s showing on the merits of his or her opponent’s claims”); *Lipscombe*, 888 A.2d at 1173–74 (holding First Amendment did not bar defamation claim because resolution did not require “inquiry by the court into church religious practices or financial management”); *McAdoo v. Diaz*, 884 P.2d 1385, 1390–91 (Alaska 1994) (holding First Amendment did not bar church volunteer’s defamation claim against pastor because “a determination of whether the statements were true and the amount of damage to [the volunteer’s] reputation does not present a religious question”); *Marshall v. Munro*, 845 P.2d 424, 425, 428 (Alaska 1993) (holding First Amendment did not bar pastor’s defamation claim against executive presbyter who told other churches that pastor “was divorced, was dishonest, was unable to perform pastoral duties due to throat surgery, and had made an improper advance to a [church] member,” because courts need “only determine if the facts stated were true and if [the presbyter] made the statements with malice,” without deciding whether the pastor was qualified to serve).

Here, the Court asserts that the First Amendment bars Guerrero’s defamation claim because the resolution of that claim “will necessarily require the trial court to evaluate whether the Diocese properly applied Canon Law.” *Ante* at \_\_\_\_.

Specifically, the Court suggests that resolution of Guerrero's claim will require courts to perform a "secular investigation into the Diocese's understanding of the term 'minor,' whether the court agrees that the woman he allegedly sexually abused qualifies as a 'minor' under Canon Law, and whether the allegations which the church possesses were sufficiently 'credible.'" *Ante* at \_\_.

To be sure, the First Amendment bars courts from second-guessing a church's internal decisions regarding the meaning of words it uses in its internal doctrinal statements. The Catholic Church has painstakingly struggled with the "concept of 'minor,'" which "has varied over the course of time." *Vademecum on Certain Points of Procedure in Treating Cases of Sexual Abuse of Minors Committed by Clerics*, THE HOLY SEE (July 16, 2020), [http://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_20200716\\_vademecum-casi-abuso\\_en.html](http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20200716_vademecum-casi-abuso_en.html). Initially, the church defined the term to include only persons under sixteen years of age, but it expanded the definition in 2001 to include those under eighteen. *Id.* In 2010, the church announced that any "person who habitually has the imperfect use of reason is to be considered equivalent to a minor." *Id.* But this is to be distinguished from a "vulnerable adult," described as "any person in a state of infirmity, physical or mental deficiency, or deprivation of personal liberty which, in fact, even occasionally limits their ability to understand or to want or otherwise resist the offence," who, apparently, in some (but not all) circumstances, also qualifies as a "minor" under the church's laws. *Id.* In 2019, however, Pope Francis referred alternatively to "a minor or a

vulnerable person,” providing different definitions for each term. *Apostolic Letter Issued Motu Proprio by the Supreme Pontiff Francis “Vos Estis Lux Mundi,”* THE HOLY SEE (May 7, 2019), [http://www.vatican.va/content/francesco/en/motu-proprio/documents/papa-francesco-motu-proprio-20190507\\_vos-estis-lux-mundi.html](http://www.vatican.va/content/francesco/en/motu-proprio/documents/papa-francesco-motu-proprio-20190507_vos-estis-lux-mundi.html) (emphasis added). And just this month, the church revised (for the first time in over forty years) the penal provisions of the church’s Code of Canon Law, which now refer in the alternative to “a minor *or* a person who habitually has an imperfect use of reason *or* one to whom the law recognizes equal protection.” 2021 CODE c.1398, § 1(emphasis added), <https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2021/06/01/210601b.html>.

But to resolve Guerrero’s defamation claim against the Lubbock Diocese, courts need not struggle through the church’s internal doctrinal definitions of the term “minor.” To recover on his claim, Guerrero must only establish that the Diocese published a factual statement about him that was both defamatory and false, and that it did so “with the requisite degree of fault.” *Dall. Morning News, Inc. v. Tatum*, 554 S.W.3d 614, 623 (Tex. 2018). Under neutral principles of Texas law, a publication is false—or not “substantially true” and thus actionable—if it “is more damaging to the plaintiff’s reputation than a truthful broadcast would have been.” *Neely v. Wilson*, 418 S.W.3d 52, 63 (Tex. 2013). And a publication is defamatory (or libelous) if it “tends to injure a living person’s reputation and thereby expose the person to public hatred, contempt or ridicule, or financial injury or to impeach any person’s honesty, integrity, virtue,

or reputation.” *Id.* at 60 (quoting TEX. CIV. PRAC. & REM. CODE § 73.001).

Importantly, courts must make these determinations based not on the speaker’s intended meaning of the words it published, but “upon how a person of ordinary intelligence would perceive” the statement, in light of all the surrounding circumstances. *Turner v. KTRK Television, Inc.*, 38 S.W.3d 103, 114 (Tex. 2000). The statement’s meaning, in other words, “and thus whether it is false and defamatory, depends on a reasonable person’s perception of the entirety of a publication,” not on what the Diocese may have intended when it used the word “minor.” *Id.* at 115. To prevail, Guerrero must prove not what the Diocese meant when it publicly stated that Guerrero had been credibly accused of sexually abusing a “minor,” but what the public would have understood that statement to mean, given all the circumstances. Noting that the Diocese’s public statements regarding the list it publicized referred to the safety of “children,” Guerrero alleges that the public would have understood that Guerrero had been credibly accused of sexually abusing a child.

Applying these neutral principles of Texas law “obviates entirely the need for an analysis or examination of ecclesiastical polity or doctrine.” *Jones*, 443 U.S. at 605. Indeed, the Catholic Church has itself agreed that its norms governing the reporting of suspected sexual abuse by clergy should “apply without prejudice to the rights and obligations established in each place by state laws.” *Apostolic Letter Issued Motu Proprio by the Supreme Pontiff*

*Francis “Vos Estis Lux Mundi,”* THE HOLY SEE (May 7, 2019), [http://www.vatican.va/content/francesco/en/motu-proprio/documents/papa-francesco-motu-proprio-20190507\\_vos-estis-lux-mundi.html](http://www.vatican.va/content/francesco/en/motu-proprio/documents/papa-francesco-motu-proprio-20190507_vos-estis-lux-mundi.html).

Courts need not delve into ecclesiastical issues to decide whether the Diocese’s statement that “credible allegations” had been made that Guerrero sexually abused a “minor” was false and defamatory. Those determinations involve purely secular issues to be resolved by applying neutral principles of law.

When the Oregon Supreme Court concluded that the First Amendment did not bar a defamation claim based on statements accusing a minister of theft and misappropriation, it observed that such a claim was no “more (or less)” an ecclesiastical matter than a claim “accusing a pastor of child molestation.” *Tubra*, 225 P.3d at 872. No matter how pure their intent, religious organizations cannot immunize themselves from court inquiries regarding such important societal concerns merely by incorporating those concerns into their religious doctrine. As a Louisiana court explained:

Society does not view child molestation as a matter of religious doctrine, as distinguished from, say, the procedures within the Church necessary to atone for such a sin. Child sexual abuse is anathema to society in general, even to atheists. It is prohibited by secular laws. The public has an interest in matters of child molestation. Therefore,

where child molestation is at issue, it cannot be considered just an internal matter of Church discipline or administration. Child molestation is distinguishable from those cases where religious figures claim that their reputations were damaged because they were found to be poor administrators or where their private conduct did not comport with church standards, but the issue was not one of the violation of secular criminal laws.

*The Church cannot appropriate a matter with secular criminal implications by making it simultaneously a matter of internal Church policy and discipline.*

*Hayden*, 701 So. 2d at 1356 (emphasis added).

#### **IV. Conclusion**

The Court need not and does not decide today whether the Catholic Church has responded adequately or appropriately to the “culture of abuse” that existed within its midst. Nor need we decide whether the Lubbock Diocese should be held liable to Guerrero for defamation. Our views on those issues are irrelevant to the only issue before us: whether the First Amendment prohibits Texas courts from hearing Guerrero’s claim. If it does, we must dismiss the claim and leave Guerrero and the Diocese to their mutual pursuit of righteousness and fellowship within the

tenets of their shared faith.<sup>14</sup> But if it does not, we are as duty-bound to hear and resolve Guerrero's claim as we would be to refrain from hearing it if the First Amendment did apply. *See Masterson*, 422 S.W.3d at 606. Because Guerrero's defamation claim is based on statements the Lubbock Diocese published beyond the church to the general public, and because courts can resolve that claim based on neutral principles without becoming entangled in ecclesiastical issues, I agree with all the federal and state courts around the country, which have consistently held that the First Amendment does not bar the courts from hearing such a claim. Because the Court holds otherwise, I respectfully dissent.

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Jeffrey S. Boyd  
Justice

**OPINION DELIVERED:** June 11, 2021

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<sup>14</sup> Some might contend that those shared tenets compel both parties to resolve their dispute without the courts' involvement regardless of whether the First Amendment bars Guerrero's claim. See 1 Corinthians 6:7 ("Why not rather be wronged?") But that ecclesiastical issue is not for this Court to decide.



## IN THE SUPREME COURT OF TEXAS

NO. 20-0127

IN RE DIOCESE OF LUBBOCK, RELATOR

ON PETITION FOR WRIT OF MANDAMUS

JUSTICE BLACKLOCK, concurring.

“[I]n this world of sin and woe,” our judicial system, like democracy in general, “is the worst form of government except all those other forms that have been tried from time to time . . . .” Winston Churchill, Speech at the House of Commons (Nov. 11, 1947). We seek justice in every case, but the justice dispensed by courts is never perfect, often unsatisfying, and sometimes, many would say, downright unjust. This will always be so because the judgment courts provide is human judgment. As with everything human, it is limited and imperfect. Courts, like all of government, are necessary in the first place because men are not angels. *See* THE FEDERALIST NO. 51, at 337 (James Madison) (Sherman F. Mittell ed., 1937). Judges are no exception.<sup>1</sup> The faithful among us look forward to a day

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<sup>1</sup> “It is fit and proper that there should be an end to litigation . . . and to accomplish this end courts of last resort have been established. It does not follow that the judgments of the highest courts or judicatories are always right, for everything done by man is at best imperfect, and liable to be erroneous, but it is the best system which has yet been devised for the well-being of society . . . . The utter impolicy of the civil courts attempting to interfere in determining matters which have been passed upon in church tribunals, arising out of ecclesiastical concerns, is apparent.” *State ex rel. Watson v. Farris*, 45 Mo. 183, 197–98 (1869).

when God’s unlimited, perfect judgment “will wipe away every tear from their eyes.” *Revelation* 21:4 (English Standard Version). That day is yet to come, and we are left, for now, with the ugliness of litigation as the least bad way to settle many of our differences.

The intractable imperfection of human judgment is one of many reasons our Constitutions deny government authorities—including courts—any power over churches. Both the Texas Constitution and the United States Constitution compel judges to acknowledge that there are places where our imperfect judicial system does not belong, places where earthly judges have no power.<sup>2</sup> The human impulse to right every wrong is understandable, but it can become totalitarian, unless it is accompanied by an acknowledgment of our human incapacity to truly right all wrongs, our incapacity as imperfect people to dispense perfect justice. There are certain places in our world— places like the church and the family— whose character as independent sources of authority apart from the state is best preserved by keeping courts and judges out of the picture.<sup>3</sup> This may mean

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<sup>2</sup> See TEX. CONST. art. I, § 6 (“No human authority ought, *in any case whatever*, to control or interfere with the rights of conscience in matters of religion . . . .”) (emphasis added); U.S. CONST. amend. I (“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . .”).

<sup>3</sup> “The judicial eye of the civil authority of this land of religious liberty, cannot penetrate the veil of the Church, nor can the arm of this Court either rend or touch that veil for the forbidden purpose of vindicating the alleged wrongs of the excinded members.” *Shannon v. Frost*, 42 Ky. 253, 259 (1842).

that some wrongs are not righted in this life, though it would be a mistake to assume that human judges, if given the chance, would always right them wisely. We preserve the independence of our most precious private institutions from the all-consuming power of the state by drawing clear lines and abiding by them, even if doing so seems—from our limited, imperfect perspective—to leave a wrong unrighted. Our Constitutions draw many such lines, none clearer than their protections for religion.

Like all of us, the Diocese of Lubbock will have to answer to God for the words it chooses.<sup>4</sup> Because of our Constitutions, however, it does not have to answer to earthly judges. A robust rule of ecclesiastical abstention prevents the judgments of courts from influencing the words or actions of churches, whose mission is to seek conformity with God's perfect judgment, not with man's imperfect variety. A church is not truly free to manage its affairs, practice its faith, and publicly proclaim its doctrine if lawyers and judges lie in wait to pass human judgment on whether the church should have chosen its words more carefully. When a church makes public statements on ecclesiastical or spiritual matters, it is not for courts to apply the earthly standards of defamation law to the church's words. Our Constitutions prohibit courts from imposing imperfect human justice on words spoken in pursuit of God's perfect justice.

I respectfully concur.

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James D. Blacklock  
Justice

**OPINION DELIVERED:** June 11, 2021



**In The**

**Court of Appeals**

**Seventh District of Texas at Amarillo**

**No. 07-19-00307-CV**

**IN RE DIOCESE OF LUBBOCK, RELATOR**

**ORIGINAL PROCEEDING FOR WRIT OF  
MANDAMUS**

**December 6, 2019**

**OPINION**

**Before QUINN, C.J., and PIRTLE  
and PARKER, JJ.**

"Render therefore unto Caesar the things which are Caesar's; and unto God the things that are God's."<sup>1</sup> The biblical verse captures the inherent conflict long existent between civil and religious authority. We now address an aspect of that conflict raised through the ecclesiastical abstention doctrine.

Jesus Guerrero sued the Diocese of Lubbock for allegedly defaming and intentionally inflicting emotional distress upon him. The accusations

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<sup>1</sup> *Matthew* 22:21.

underlying both causes of action concern the Diocese's publication of a list entitled "Names of All Clergy with a Credible Allegation of Sexual Abuse of a Minor." Guerrero, a former deacon with the Diocese, found his name on the list. The Diocese moved to dismiss the action under § 27.001 *et seq.* of the Texas Civil Practice and Remedies Code. So too did it file a plea to the jurisdiction of the 237th District Court, Lubbock County. Both motions were denied. That resulted in the Diocese asking us to review the motion to dismiss via a separate interlocutory appeal and the plea to the jurisdiction through a petition for writ of mandamus. We address the latter here. In it, the Diocese asks us to issue the equitable writ to direct the Honorable Les Hatch, presiding judge of 237th Judicial District Court, to “vacate the trial court’s denial of its plea to the jurisdiction, and reverse and render judgment granting the plea to the jurisdiction.”<sup>2</sup> We deny the petition.

*Abstention Doctrine and Subject-Matter Jurisdiction*

Mandamus is an extraordinary remedy available only in limited situations. *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992) (orig. proceeding); *In re Talley*, No. 07-1500198-CV, 2015 Tex. App. LEXIS 6268, at \*3–4 (Tex. App.—Amarillo June 22, 2015,

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<sup>2</sup> We interpret the request as one asking that we direct the trial court to 1) vacate its order and 2) enter another dismissing the suit. Through a writ of mandamus, we do not substitute our order for that of the trial court. Instead, we assess the accuracy of the trial court’s decision and, if inaccurate, direct it to enter the order it should have.

orig. proceeding) (mem. op.). Its small umbrella, though, extends over jurisdictional disputes. *In re Torres*, No. 07-19-00220-CV, 2019 Tex. App. LEXIS 6516, at \*2-3 (Tex. App.—Amarillo July 30, 2019, orig. proceeding) (mem. op.); *In re Alief Vietnamese Alliance*, 576 S.W.3d 421, 428 (Tex. App.—Houston [1st. Dist.] 2019, orig. proceeding). Within such disputes lie questions about the effect certain religious liberties have upon a trial court’s subject-matter jurisdiction. See, e.g., *Westbrook v. Penley*, 231 S.W.3d 389, 394 (Tex. 2007) (stating that a lack of jurisdiction may be raised through a plea to a court’s jurisdiction when religious-liberty grounds form the basis of the jurisdictional challenge); *In re Torres*, 2019 Tex. App. LEXIS 6516, at \*3. And, such is the dispute here. The Diocese posits that the ecclesiastical abstention doctrine bars the trial court from adjudicating Guerrero’s lawsuit. In refusing to dismiss it, the trial court allegedly abused its discretion. See *In re Navajo Nation*, \_\_\_ S.W.3d \_\_\_, \_\_\_, 2019 Tex. App. LEXIS 8224, at \*9-10 (Tex. App.—Amarillo Sept. 10, 2019, orig. proceeding) (stating that mandamus is appropriate when the relator shows that the trial court clearly abused its discretion and lacked an adequate legal remedy).<sup>3</sup>

We recognized in *In re Torres*, 2019 Tex. App. LEXIS 6516, that the doctrine may indeed deprive trial courts of jurisdiction to adjudicate certain civil actions and entitle an ecclesiastical entity to a writ of

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<sup>3</sup> A relator need not illustrate that he lacks an adequate legal remedy if the trial court lacks jurisdiction over the suit. *In re Alief Vietnamese Alliance*, 576 S.W.3d at 428.

mandamus. *See id.* at \*6-7. It all depends upon whether the factual circumstances underlying the causes of action fall within the doctrine's scope.

Generally speaking, the ecclesiastical abstention doctrine bars civil courts from adjudicating matters concerning theology, theological controversy, church discipline, ecclesiastical government, and compliance with church moral doctrine. *Reese v. Gen. Assembly of Faith Cumberland Presbyterian Church in Am.*, 425 S.W.3d 625, 629 (Tex. App.—Dallas 2014, no pet.). Though easily described, its application and scope are the source of debate. This is so because the doctrine does not necessarily bar civil courts from adjudicating all controversies touching sectarian interests. *In re First Christian Methodist Evangelistic Church*, No. 05-18-01533-CV, 2019 Tex. App. LEXIS 8045, at \*12 (Tex. App.—Dallas Aug. 30, 2019, orig. proceeding) (mem. op.); *In re St. Thomas High Sch.*, 495 S.W.3d 500, 507 (Tex. App.—Houston [14th Dist.] 2016, orig. proceeding). After all, religious entities, like the coins of Caesar, co-exist within the secular world.

Several years ago, our Texas Supreme Court provided a framework to utilize when parsing through the debate. We were told, in *Masterson v. Diocese of Nw. Tex.*, 422 S.W.3d 594 (Tex. 2013), to apply the neutral principles methodology. *Id.* at 596; *In re Torres*, 2019 Tex. App. LEXIS 6516, at \*3 (so acknowledging). It better conforms to a court's constitutional duty to decide disputes within their jurisdiction while respecting limitations imposed by those provisions in the First Amendment of the United States Constitution concerning religion. *Masterson*, 422 S.W.3d at 596. Per that methodology,



courts have the jurisdiction to determine non-ecclesiastical issues based on the neutral principles of law applicable to other entities. *Id.* Falling outside that jurisdiction, though, are decisions by religious entities on ecclesiastical and church polity questions; those we leave to the ecclesiastical authority making them. *Id.* However, this is another test more easily described than applied. As acknowledged in *Masterson*, the difference between ecclesiastical and non-ecclesiastical issues will not always be distinct. *Id.* at 606. Indeed, the resolution of non-ecclesiastical matters may sometimes impinge on church operations to some degree. *See id.* (stating that many disputes of the type there before the court, i.e., property ownership after a church schism, will require courts to analyze church documents and organizational structures to some degree).

Normally, matters of religion or theology, church discipline, church governance, church membership, and the conformity of those members to church precepts are ecclesiastical in nature and outside the jurisdiction of civil courts. *See Westbrook v. Penley*, 231 S.W.3d at 397-98; *Jennison v. Prasifka*, 391 S.W.3d 660, 665 (Tex. App.—Dallas 2013, no pet.); *accord In re Torres*, 2019 Tex. App. LEXIS 6516, at \*5-6 (listing the areas deemed ecclesiastical by our sister courts). Yet, as said in *Hubbard v. J Message Grp. Corp.*, 325 F.Supp.3d 1198 (D.N.M. 2018), “nuances,” “context and . . . subtle distinctions in the context” play an important role, as well. *Id.* at 1213-14. For instance, in *Westbrook*, a pastor directed his congregation, via letter, to 1) shun Penley for engaging in a “biblically inappropriate” relationship and 2) “treat the matter as a ‘members-only issue, not to be shared with those

outside [the congregation].” *Westbrook*, 231 S.W.3d at 393. The revelation about the “inappropriate” relationship occurred when Penley told Pastor Westbrook of same during a counseling session. *Id.* The pastor’s letter resulted in Penley suing Westbrook for defamation and professional negligence. All but the professional negligence claims were dismissed by the trial court. Ultimately, our Supreme Court held that the negligence claim also had to be dismissed. This was so because “[a]ny civil liability that might attach for Westbrook’s violation of a secular duty of confidentiality in this context would in effect impose a fine for his decision to follow the religious disciplinary procedures that his role as pastor required and have a concomitant chilling effect on churches’ autonomy to manage their own affairs.” *Id.* at 402.

The court observed that Westbrook’s disclosure was grounded in religious doctrine concerning a three-step disciplinary process. *Id.* at 404. An “integral part” of that doctrine required disclosure to church elders, that is, “to ‘tell it to the church.’” *Id.* Furthermore, “[t]he letter itself was disseminated to the congregation as the final step in the process,” that process being “[t]hrough their continuing sin, they forfeit their membership in the church, and members of the church are to break fellowship with them.” *Id.* That Westbrook’s action was founded upon church tenet obligating church members to respond in a particular way to the discovery of a particular act was incremental to the decision by the Supreme Court.

Then, we have *Turner v. Church of Jesus Christ of Latter-Day Saints*, 18 S.W.3d 877 (Tex. App.—Dallas 2000, pet. denied). It involved a missionary trip

by Turner undertaken as part of his religious duty. The church ended it early due to Turner purportedly encountering emotional or mental problems. Turner sued the church alleging multiple causes of action including defamation. But since the facts underlying those claims implicated church practice and procedure, most were dismissed for want of jurisdiction. The defamation claim was not, though. It arose from the disclosure of medical records to Turner's grandparents. In explaining why it survived, the court initially observed that while "the First Amendment prohibits government regulation of the information a religious organization chooses to record concerning its members, the government may regulate the organization's use of that information if the regulation would not actively involve the government in the organization's internal affairs, religious practice, or religious doctrine." *Id.* at 896. Then, it noted that the church failed to explain how the disclosure of Turner's medical records to his grandparents "concern[ed] the internal policies of the Church or matters of faith or ecclesiastical doctrine." *Id.* Also absent was any explanation about "how resolution of the claim would actively involve the government in the Church's religious activities or excessively entangle the government with religion." *Id.* Consequently, the First Amendment of the United States Constitution did not bar the defamation claim. *Id.* What we see from *Turner* is the importance of indicia such as the reason for the disclosure and the interrelationship between that reason and the church's internal affairs, religious practice, and doctrine.

The *Turner* court is not alone in assigning weight to the identity of those told information and their relationship to the church. In *Jennison*, 391 S.W.3d at 668, the reviewing court held that the facts underlying the claim of defamation concerned discipline imposed by the church upon a priest for inadequate performance. Their adjudication necessarily required inquiry into canon law, the application of church policy, and the church's assessment of the complainant's fitness to perform his religious duties. *Id.* Thus, the ecclesiastical abstention doctrine applied to the claims. Yet, before so holding, the court took care to mention that “[t]he only defamatory statements allegedly made . . . were made to the church itself in connection with the church’s disciplinary process.” *Id.* *Jennison* made “no allegation the allegedly defamatory statements were made in any other forum.” *Id.* In other words, the injurious act arose from historically ecclesiastical conduct, namely engaging in the internal discipline of clergy, that remained internal.

Similarly, in *Patton v. Jones*, 212 S.W.3d 541 (Tex. App.—Austin 2006, pet denied), the reviewing court held the abstention doctrine barred the defamation suit Patton commenced against the church and various of its clergy. He was the director of youth ministries and was terminated from the job due to allegedly inappropriate conduct. *Id.* at 545-46. In holding as it did, the court applied a three-prong test first announced in *Heard v. Johnson*, 810 A.2d 871 (D.C. App. 2002). *Id.* at 554-55. Those prongs consisted of whether 1) the claim flowed entirely from an employment dispute between the church and its pastor rendering it impractical to separate the claim

from the church's decision as to its pastor, 2) the publication was confined within the church, and 3) there existed unusual or egregious circumstances. *Id.* (quoting *Heard*, 810 A.2d at 885). Patton's claim 1) flowed entirely from an internal employment dispute between the church and its pastor, 2) involved a publication confined within the church, and 3) implicated no unusual or egregious circumstances surrounding the comments. So, as in *Jennison*, the source of Patton's claim emanated from historically ecclesiastical conduct confined within the body having the duty to undertake that conduct. The civil courts were barred for entertaining it.

*Kelly v. St. Luke Comm. United Methodist Church*, No. 05-16-01171-CV, 2018 Tex. App. LEXIS 962 (Tex. App.—Dallas Feb. 1, 2018, pet. denied) (mem. op.), also involved a suit filed by a terminated church employee. So too was the ecclesiastical doctrine the reason why all but one cause of action was dismissed; the one claim retained was that of defamation. *Id.* at \*2. The injurious act underlying the claims consisted not only of statements to church members but also communications to “persons outside the church” and non-church members witnessing the injurious act. *Id.* at \*25. Those circumstances led the court to hold that “the ecclesiastical abstention doctrine applie[d] to all of Kelly's claims other than the portion of her defamation claim in which she asserts she was defamed by the alleged publication of the statements described above to persons outside the church.” *Id.* at \*26-27. So, like *Turner*, while the injurious act arose from historically ecclesiastical activity, it lost protection when it escaped the internal confines of the religious entity performing it. *See also, Hubbard*, 325

F.Supp.3d at 1219 (holding that because the alleged defamations were published exclusively to the church membership, “this fact strengthens the [Court’s] conclusion that Plaintiff’s claims, having occurred in the context of an ecclesiastical dispute . . . are barred by the First Amendment”); *Pfeil v. St. Matthews Evangelical Lutheran Church*, 877 N.W.2d 528, 541 (Minn. 2016) (involving statements made by pastors during a formal church disciplinary proceeding and stating that “on the facts before us—where ministers made largely religious and doctrinal allegations as part of an excommunication proceeding and only disseminated those statements to members of the congregation—the First Amendment has struck the balance for us”); *Kliebenstein v. Iowa Conf. of the United Methodist Church*, 663 N.W.2d 404, 407 (Iowa 2003) (stating that 1) “[t]he fact that Swinton’s communication about Jane was published outside the congregation weakens this ecclesiastical shield,” 2) “otherwise privileged communications may be lost upon proof of excess publication or publication ‘beyond the group interest,’” and 3) “if publication solely to church members justifies ecclesiastical status for otherwise defamatory communications, proof of publication to *non*-church members arguably supports the opposite conclusion”) (emphasis in original); *Ex parte Bole*, 103 So. 3d 40, 59-60 (Ala. 2012) (in barring prosecution of the claim, the court observed that 1) the “statement of which [Trice] complained related to the ostensible reason for his termination, conveyed from the pastor to a member of the congregation concerning the conduct of another member” and 2) “[a]t least one court has specifically held that statements by and between church members ‘relat[ing] to the Church’s reasons and motives for terminating [parishioners]’

membership' 'require an impermissible inquiry into Church disciplinary matters").

A common thread runs through the authority just cited. A religious body exposing matters historically deemed ecclesiastical to the public eye has consequences. The action leaves the area of deference generally afforded those bodies and enters the civil realm. This is not to say that such a publication alone is always enough, but it is a pivotal nuance. Indeed, arguing that a dispute remains an internal ecclesiastical or church polity issue after that body chooses to expose it publicly rings hollow. And, that is the situation here.

Guerrero's claims arise not from the decision of the Diocese to discipline a deacon for engaging in inappropriate sexual activity. That had been done years earlier with its most recent effort having culminated in 2009. Instead, they arise from a decision made some nine to ten years later "to release the names of clergy who have been credibly accused of sexual abuse of a minor." A list was developed containing those names, and Guerrero's name appeared on it. The Diocese not only incorporated the list into a message describing its purpose and inviting those who may have suffered from such abuse to contact the Diocese but also posted it on its website accessible by the general public. The posting occurred on January 31, 2019.

The Diocese then accompanied its internet post with a press release. Through the press release dated January 31, 2019, the body announced to local media that it joined other Catholic Dioceses in Texas in

“releas[ing] names of clergy who have been credibly accused of sexually abusing a minor.” It continued with: “[t]he bishops’ decision was made in the context of their ongoing work *to protect children* from sexual abuse, and their efforts to promote healing and a restoration of trust in the Catholic Church.” (Emphasis added). Also referred to within the release was a letter from the bishop of the Lubbock Diocese. In the letter, the bishop said that “the administrations of our dioceses are serious about ending the cycle of abuse in the Church *and in society at large*, which has been allowed to exist for decades.” (Emphasis added). “The scourge of abuse must be stopped,” wrote the bishop.

News coverage followed. In one instance, a local television station aired a segment announcing that “four priests . . . and one deacon have credible allegations against them . . . of sexual abuse against *children* . . . according to the Lubbock Diocese.” (Emphasis added). Guerrero again was mentioned as one of the group. Following that pronouncement were snippets from a chancellor of the Diocese. The snippets included the chancellor 1) explaining that the reason the names were not released “sooner” was “bishops at the time wanted to keep church issues . . . within the church,” 2) saying that “we felt that whatever was handled within the church as far as church punishment was concerned needed to remain in the church,” and 3) revealing that though relevant names initially were disclosed to church members, “they weren’t made public.” The same church representative also sought to



assure that “the church *\*is\** safe *for children*.”<sup>4</sup> (Emphasis added).

Another media outlet reported on the release as well. It alluded to an interview held with the bishop of the Lubbock Diocese several months earlier, in October of 2018. The bishop was quoted as saying in that earlier interview: “[i]t’s time we need to be honest about these kinds of matters and *society* hasn’t always been open and honest about those.” (Emphasis added). He also conceded that the church itself had “maybe done some concealing of such things,” too.

As can be seen, what began years earlier as an exercise in internal church discipline evolved into an effort at transparency broadcast worldwide through the media and internet. Though somewhat confessional in tone, the event was utilized by the Diocese, according to one or more church representatives, as opportunity to address sexual abuse against “children,” help victims of sexual abuse, assuage public concern about the safety of “children” in the church, and criticize both the church and “society” for not “always [being] open and honest about” the topic of sexual abuse.

What we have before us is not an incidental public disclosure of internal church disciplinary matter. Nor was the information leaked to the public

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<sup>4</sup> In the interview with the local station, the Chancellor also alluded to “the age of the victim” and families not wanting “the embarrassment for themselves and their children” when explaining why “parents” do not want information released and why legal action is not commenced in the “court system.”

via the media by individuals lacking permission to do so. *See In re Godwin*, 293 S.W.3d 742, 745-46 (Tex. App.—San Antonio 2009, orig. proceeding) (wherein an ex-employee of the church gave a local newspaper the church's financial information without permission of the church). Nor did it involve reiteration outside the church of purported statements uttered within church confines, such as in a sermon or message directed to church members. *See id.* at 746 (where the utterance at issue was made to those attending church services and from the pulpit).<sup>5</sup> That the Diocese posted the list on a website accessible by the public at-large and brought attention to the list and its accessibility through use of local news media distinguishes the circumstances at bar from *Penley*, *Jennison*, *Patton*, and every other judicial opinion we encountered (or the Diocese cited) that imposed the ecclesiastical abstention doctrine as a bar.

There is also another bit of nuance distinguishing our situation from the foregoing authority. It is the interjection into the discussion of more than simply the misconduct of those related to the church. The church's statements that 1) "our dioceses are serious about ending the cycle of abuse in the Church and ***in society at large***, which has been allowed to exist for decades" and 2) "[i]t's time we need

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<sup>5</sup> Even the court in *Godwin* hesitated when it came to holding that everything said from the pulpit is insulated from consideration by civil courts. *In re Godwin*, 293 S.W.3d at 749 (stating that "[c]ase law instructs us that there are indeed limits to what can be said by church officials from the pulpit" and "an accusation of inappropriate sexual behavior would likely not be protected").

to be honest about these kinds of matters *and society hasn't always been open and honest* about those." (Emphasis added). They reveal 1) an acknowledgement that the issue necessitating attention (i.e., sexual abuse) is more than a church matter but rather one of society at-large, 2) an intent to induce society at-large to address the issue, and 3) an intent to join society at-large in the effort. So, admonishing, inducing, and joining society at-large is telling. Those indicia provide further basis dispelling any nexus between the Diocese's conduct and any theological, dogmatic, or doctrinal reason for engaging in it. The same is also true regarding any nexus between the decision to go public and the internal management of the church.

Finally, underlying Guerrero's claim of defamation and infliction of emotional distress is more than simply a disagreement about the meaning of a religious term imbedded in canon law, as the Diocese would have us conclude.<sup>6</sup> He avers that the church labelled him a "child molester," given the context of the publication. That context is not the definition of "minor" printed in a retraction posted months later. It is the Diocese using the word "minor" at the same time 1) its chancellor tells the media and public that "the church *\*is\** safe for *children*" and 2) it represents in a press release that disclosing the names was made "in the context of . . . ongoing work to protect *children* from sexual abuse." (Emphasis added). And, the

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<sup>6</sup> Apparently, canon law defines "minor" as including all people lacking the ability to reason. The individual Guerrero supposedly abused was an adult allegedly within that description.

Diocese has not cited us to, nor does it argue that, those of its representatives invoking the word "children" were relying on, at the time, some bit of canon law or theological tenet that includes adults within the category.

Whether one is defamed depends on evaluating not only the statement uttered but also its context or surrounding circumstances based upon how a person of ordinary intelligence would perceive it. *See Scripps NP Operating, LLC v. Carter*, 573 S.W.3d 781, 794-95 (Tex. 2019) (directing the use of context); *D Magazine Partners, L.P. v. Rosenthal*, 529 S.W.3d 429, 439 (Tex. 2017) (directing consideration of the surrounding circumstances). Canon law is not in play.

What is in play is how a person of ordinary intelligence would perceive the accusation that Guerrero sexually abused a "minor" when the church accompanied the word with references to abuse involving "children" and the safety of children. For instance, it mattered not that the name "Satan" and the phrase "in the spirit of Satan" may have had sectarian meaning in *Kliebenstein*. Because both also had secular meaning, the court in *Kliebenstein* held that it was improper to dismiss Kliebenstein's defamation suit when the comparisons of her with Satan left the confines of the church. *Kliebenstein*, 663 N.W.2d at 408. Both "minor" and "child" have secular meaning to a person of ordinary intelligence. That either may have sectarian meaning, as well, does not mandate application of the ecclesiastical abstention doctrine.

To quote from *Westbrook*, "the First Amendment does not necessarily bar all claims that may touch upon religious conduct." *Westbrook*, 231 S.W.3d at 396. Secular courts are not barred from adjudicating all controversies touching sectarian interests. That is the situation here. The Diocese, like the churches in *Kliebenstein*, *Kelly*, and *Turner*, placed the controversy in the realm of Caesar or the secular world by opting to leave the confines of the church. Thus, the secular court in which Guerrero sued is not barred from adjudicating the matter.

We deny the petition for writ of mandamus.

Brian Quinn  
Chief Justice



**In The  
Court of Appeal  
Seventh District of Texas at Amarillo**

**No. 07-19-00280-CV**

**DIOCESE OF LUBBOCK  
APPELLANT V.  
JESUS GUERRERO, APPELLEE**

**On Appeal from the 237<sup>th</sup>  
District Court, Lubbock County,  
Texas Trial Court No. 2019-534,677,  
Honorable Les Hatch, Presiding**

**December 6, 2019 Opinion  
Before QUINN, C.J., and PIRTLE  
and PARKER, JJ.**

This appeal is a companion case to the petition for writ of mandamus filed by the Diocese of Lubbock. Our opinion in that cause is styled *In re Diocese of Lubbock*, No. 07-19-00307-CV. We address, now, the appeal perfected by the Diocese of Lubbock from the order denying its motion to dismiss. The Diocese so moved under § 27.001 of the Texas Civil Practice and

Remedies Code (TCPA).<sup>1</sup> TEX. CIV. PRAC. & REM. CODE ANN.

§ 27.001 *et seq.* (West 2015). We affirm in part and reverse in part.

Our opinion in *In re Diocese of Lubbock* describes the general background from which this appeal arose. We see no need to reiterate it and, instead, incorporate the opinion into this one. Suffice it to say that Guerrero sued the Diocese for defamation and intentional infliction of emotional distress after the Diocese published a list entitled “Names of All Clergy with a Credible Allegation of Sexual Abuse of a Minor” (i.e., the List).<sup>2</sup> The list included Guerrero’s name. According to the Diocese, his suit is subject to dismissal because the underlying claims fell within the scope of § 27.003(a) of the TCPA. It also contends that the trial court lacked jurisdiction to entertain the cause due to the ecclesiastical abstention doctrine. We addressed the latter issue via our opinion in Cause No. 07-19-00307-CV and again reject the jurisdictional claim for the reasons stated in that opinion. Now we turn to the TCPA and whether it mandated dismissal.

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<sup>1</sup> Because Guerrero sued prior to September 1, 2019, the legislative amendments to the TCPA that took effect on September 1, 2019 have no application here. *See City of Port Aransas v. Shodrok*, No. 13- 18-00011-CV, 2019 Tex. App. LEXIS 10063, at \*2 n.2 (Tex. App.—Corpus Christi Nov. 21, 2019, no pet. h.) (mem. op.) (stating that Chapter 27 of the Civil Practice and Remedies Code, as amended by H.B. 2730, apply only to an action filed on or after the effective date of this Act which was September 1, 2019).

<sup>2</sup> This list was first published on January 31, 2019, and is not the retraction and clarification published in April of 2019.

***TCPA***

The provisions of the TCPA act like a pendulum; they impose burdens on the parties that swing back and forth. How they swing was described in *Batra v. Covenant Health Sys.*, 562 S.W.3d 696, 706-08 (Tex. App.—Amarillo 2018, pet. denied), and *Castleman v. Internet Money Ltd.*, No. 07-16-00320-CV, 2018 Tex. App. LEXIS 8559, at \*5-7 (Tex. App.—Amarillo Oct. 18, 2018, pet. denied) (mem. op.). We apply that pendulum here. Yet, before doing so, it is appropriate to note that the standard of review is *de novo*, and the pleadings, affidavits and other evidence of record are viewed in a light most favorable to the non-movant. *Batra*, 562 S.W.3d at 707-08; *Castleman*, 2018 Tex. App. LEXIS 8559, at \*5-6.

***The Diocese's Burden***

The first question is whether the causes of action fall within the ambit of the TCPA. The net cast by the statute encompasses “a legal action . . . based on, relates to, or is in response to a party’s exercise of the right of free speech, right to petition, or right of association.”<sup>3</sup> TEX. CIV. PRAC. & REM. CODE ANN. § 27.003(a). Legal actions within that scope are subject to dismissal, *id.* § 27.005(b), unless the complainant tenders “clear and specific” evidence establishing “a prima facie case” for each element of

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<sup>3</sup> “Legal action” is a lawsuit, cause of action, petition, complaint, cross-claim, counterclaim, or any other judicial pleading or filing that requests relief. TEX. CIV. PRAC. & REM. CODE ANN. § 27.001(6) (West 2015).



his claim. *Id.* § 27.005(c). That said, we turn to the pendulum of burdens.

The first burden lies with the movant to show that the action falls within § 27.003(a). *Greer v. Abraham*, 489 S.W.3d 440, 442-43 (Tex. 2016); *Batra*, 562 S.W.3d at 706. That Guerrero sued because the Diocese publicized the List on the internet and through the media is undisputed. Similarly undisputed is that the publication purported to reveal the identity of clergy against whom a “credible” allegation of sexual abuse involving minors was made. This satisfied a prong of the TCPA’s definition of “free speech,” as we now explain.

The “right of free speech” encompasses a “communication made in connection with a matter of public concern.” *See* TEX. CIV. PRAC. & REM. CODE ANN. § 27.001(3). A “communication” includes the “making or submitting of a statement or document in any form or medium.” *Id.* § 27.001(1). The List is a statement made by the Diocese and, thus, a communication.

As for the statement involving “a matter of public concern,” we note that our Texas Supreme Court held the “commission of crime” such a concern. *Brady v. Klentzman*, 515 S.W.3d 878, 884 (Tex. 2017). Sexually abusing “minors” is a criminal offense.<sup>4</sup> *See, e.g.*, TEX. PENAL CODE ANN. § 21.11(a) (West 2019)

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<sup>4</sup> The purported definition of “minor” used by the Diocese in deriving the List includes children and adults who “habitually lack the use of reason.”

(stating that a person commits an offense by engaging in sexual contact with a child younger than seventeen); *id.* § 22.011(a)(2)(A) (stating that a person commits an offense by intentionally or knowingly causing the penetration of the anus or sexual organ of a child); *id.* § 22.011(a)(1)(A), (b)(4) (stating that a person commits an offense by intentionally or knowingly causing the penetration of the anus or sexual organ of another person without the person's consent and it is without the others consent if the actor knew that the person was incapable either of resisting or appraising the act due to a mental disease or defect); *id.* § 22.011(a)(1)(A), (b)(10) (stating that a person commits an offense by intentionally or knowingly causing the penetration of the anus or sexual organ of another person without the person's consent and it is without the other's consent if the actor was a clergyman and exploited the other person's emotional dependency on the clergyman in the clergyman's position as a spiritual adviser). Since the List described potential sexual abuse of minors and that is a criminal offense, it also involved a matter of public concern. *See Crews v. Galvan*, No. 13-19-00110-CV, 2019 Tex. App. LEXIS 8962, at \*11 (Tex. App.—Corpus Christi Oct. 10, 2019, no pet.) (mem. op.) (involving statements about a clergyman inducing a seventeen-year-old to engage in sexual conduct). Thus, the Diocese satisfied its initial burden, and the pendulum swung in the direction of Guerrero.

### *Guerrero's Burden*

The next burden lies with the complainant, Guerrero, and required him to present “clear and

specific evidence” establishing a prima facie case of each element of his claims. *Batra*, 562 S.W.3d at 706-07; *Castleman*, 2018 Tex. App. LEXIS 8559, at \*6.

The burden is met through tendering the minimum amount of evidence needed to support a rational inference that each element of his claims is true. *Castleman*, 2018 Tex. App. LEXIS 8559, at \*7 (quoting *In re Lipsky*, 460 S.W.3d 579, 591 (Tex. 2015) (orig. proceeding)).

### *Defamation*

We begin with the claim of defamation. Its elements consist of a false statement published by the defendant with the requisite degree of fault that defames the plaintiff and causes him damage. *Bedford v. Spassoff*, 520 S.W.3d 901, 904 (Tex. 2017); *Castleman*, 2018 Tex. App. LEXIS 8559, at \*8. Damages need not be proved, though, where the statement is defamatory *per se*. *Bedford*, 520 S.W.3d at 904; *Castleman*, 2018 Tex. App. LEXIS 8559, at \*8. Guerrero contended that the Diocese falsely defamed him “by publishing his name on a list of alleged child molesters” and confirming those representations through its interviews with the local media. This suggests the presence of a defamation occurring through a series of events. They include not only what was said in the List but also said through a press release and ensuing interviews. As for the List, it was entitled “Names of All Clergy with a Credible Allegation of Sexual Abuse of a Minor.” Therein, the Diocese 1) apologized to “all the victims of abuse, especially minors”; 2) iterated that “this list includes the names of priests or deacons against whom a

credible allegation has been made since the Diocese . . . was created”; 3) represented that “a priest or deacon’s name only appears on the list if the diocese possesses in its files evidence of a credible allegation; and 4) explained that a “credible allegation” was “one that, after review of reasonably available, relevant information in consultation with the Diocesan Review Board or other professionals, there is reason to believe is true.” As previously mentioned, the document included Guerrero’s name and assignments with the Diocese as a deacon. As for the press release issued by the Diocese, local media were told that the Diocese joined other Texas Catholic Dioceses in “releas[ing] names of clergy who have been credibly accused of sexually abusing a minor.” So too did it mention that “[t]he bishops’ decision was made in the context of their ongoing work to protect **children from sexual abuse**, and their efforts to promote healing and a restoration of trust in the Catholic Church.” (Emphasis added). Media interviews and coverage followed. One broadcast began with the announcement that “four priests . . . and one deacon have credible allegations against them . . . of **sexual abuse against children** . . . according to the Lubbock Diocese.” (Emphasis added). Guerrero was mentioned as one of the group. Elsewhere in the broadcast the Diocese’s chancellor sought to assure the public that “the church *is* **safe for children**.” (Emphasis added).

As we said in *In re Diocese of Lubbock*, “[w]hether one is defamed depends on evaluating not only the statement uttered but also its context or surrounding circumstances based upon how a person of ordinary intelligence would perceive it.” *In re*

*Diocese of Lubbock*, No. 07-19-00307-CV, slip op. at 14 (Tex. App.—Amarillo Dec. 6, 2019, orig. proceeding) (citing *Scripps NP Operating, LLC v. Carter*, 573 S.W.3d 781, 794-95 (Tex. 2019), and *D Magazine Partners, L.P. v. Rosenthal*, 529 S.W.3d 429, 439 (Tex. 2017)); accord *In re Lipsky*, 460 S.W.3d at 594 (stating that whether a publication is false and defamatory depends on a reasonable person’s perception of the entirety of a publication and not merely on individual statements). That context or those surrounding circumstances may include a series of writings or events. See *Scripps NP Operating, LLC*, 573 S.W.3d at 791 (holding that “[t]he court of appeals could not make a proper assessment of the alleged defamatory material in this case without looking at the ‘surrounding circumstances’ encapsulated in this series” of articles). So, our review is not restricted to simply the List but rather encompasses the List, the related press release from the Diocese, as well as interviews given by church representatives about the List and why it was developed and published. From that context and those events, we conclude that a person of ordinary prudence would perceive those named in the List as clergy who may have sexually abused children or those under the age of consent.

Admittedly, the List used the term “minor,” not “child” or “children.” Yet, neither the List, press release, nor explanations from those representing the Diocese explained what it meant by “minor.”<sup>5</sup> Moreover, our common parlance tends to assign a definition to “minor” based upon age, much like the common understanding of the words “child” and

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<sup>5</sup> This definition came several months later.

“children.” In reference to human beings, “minors” are commonly understood to be under- age people or those below the age of majority or legal responsibility. See *Minor*, MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 791 (11th ed. 2003) (defining minor as “not having reached majority”); *Minor*, BLACK’S LAW DICTIONARY (6th ed. 1990) (defining minor as “[a]n infant or person who is under the age of legal competence”). In the everyday mind, they are those who are too young to legally vote, buy cigarettes, buy alcohol, or consent to sex, for instance. That common perception of the term generally does not include adults older than 17 or 21 depending upon the law involved. As for the words, “child” or “children,” they not only have a meaning similar to “minor” in our everyday parlance but often are interpreted as describing those of very young age, such as infants, toddlers, and pre-teens. See *Child*, MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 214 (11th ed. 2003) (defining child as “a young person especially between infancy and youth” and “a person not yet of age”).

We find little difficulty in concluding that one who intermixes all those terms while speaking can readily and reasonably lead the listener to believe that the subject being discussed encompasses people under the legal age. Doing such can reasonably lead others to think the speaker is discussing infants, toddlers, pre-teens and even teenagers, not adults. So, the entire context of the conversation initiated by the Diocese about sexual assault upon “minors” by clergy would lead “a person of ordinary intelligence . . . [to] perceive” that those clergy assaulted not adults but kids, youths, and other people under the age of

majority. And, the Diocese named Guerrero as one of those clergy against whom there existed a “credible allegation” of abusing “minors.”<sup>6</sup>

As for whether the publication was reasonably susceptible to a defamatory meaning, that implicates a question of law. *Dallas Morning News, Inc. v. Tatum*, 554 S.W.3d 614, 631-32 (Tex. 2018). Its answer depends on the tendency of the statement to injure a person’s reputation, expose him or her to public hatred, contempt, or ridicule, or impeach the person’s honesty, integrity, virtue, or reputation. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 73.001 (West 2017) (defining libel as “a defamation expressed

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<sup>6</sup> We are aware of the Diocese’s contention that “the statements made by representatives of the Diocese to the media were not defamatory concerning Guerrero” and “[t]here [was] no indication in any of the evidence concerning the media that either Bishop Coerver or Chancellor Martin specifically discussed Guerrero in any of the interviews.” That neither church representative said his name is inconsequential, though, under the facts at bar. The defamed person need not be expressly mentioned so long as he or she is otherwise identifiable. *Scarborough v. Purser*, No. 03-13-00025-CV, 2016 Tex. App. LEXIS 13863, at \*13 (Tex. App.—Austin Dec. 30, 2016, pet. denied) (mem. op.). And, whether the identity is ascertainable, per *Scripps, D Magazine, and Lipsky*, depends upon viewing the entire picture, not simply one corner of it. The entire picture here consists of the List, posting it for public view on the internet, the press release sending the List to the media, conversations about the List and its purpose between church representatives and the media, and the inclusion of Guerrero’s name on the List. Together, they made Guerrero’s identity as one of the clergy in question identifiable. Just as a mime can identify a wall through his actions, the Diocese and its representatives identified Guerrero through theirs.

in written or other graphic form that tends to blacken the memory of the dead or that tends to injure a living person's reputation and thereby expose the person to public hatred, contempt or ridicule, or financial injury or to impeach any person's honesty, integrity, virtue, or reputation or to publish the natural defects of anyone and thereby expose the person to public hatred, ridicule, or financial injury"). Accusing one of sexually abusing children can reasonably be perceived as having the aforementioned effect; thus, the publication here is reasonably susceptible to a defamatory meaning. And, the purported falsity of the accusation finds evidentiary support in Guerrero's sworn denial about having engaged in such conduct and in the Diocese's later admission that it had no evidence that he sexually assaulted someone under 18 years of age.

That leaves us with the two remaining elements of defamation, which elements are the statement's utterance with the requisite fault and damages. Regarding the latter, authority tells us that falsely accusing one of committing a crime is defamatory *per se*, *Dallas Morning News, Inc.*, 554 S.W.3d at 638, as is accusing one of engaging in serious sexual misconduct. *See, e.g., Miranda v. Byles*, 390 S.W.3d 543, 552 (Tex. App.—Houston [1st Dist.] 2012, pet. denied) (holding as defamatory *per se* an accusation about the sexual molestation of a child). The accusation at bar comes within both categories. Not only is it a factual statement subject to objective verification but also an accusation about criminal and serious sexual misconduct. Thus, Guerrero need not prove damages. As for the requisite fault, the standard is negligence where the plaintiff is a private,



as opposed to public, figure. *Bedford*, 520 S.W.3d at 904; *D Magazine Partners, L.P.*, 529 S.W.3d at 440. In what category Guerrero falls is a question of law. *Klantzman v. Brady*, 312 S.W.3d 886, 904 (Tex. App.—Houston [1st Dist.] 2009, no pet.). No one suggests that he was anything other than a private individual when the alleged defamation occurred. Nor does the record contain evidence placing him into the category of a public figure. *See id.* (defining the two classes of “public figures”). So, our legal conclusion is that he was a private figure at the time, and the negligence standard controls.

Under the standard of negligence, a defendant acts unreasonably if he knew or should have known that the defamatory statement was false. *D Magazine Partners, L.P.*, 529 S.W.3d at 440. The record before us contains sufficient evidence to make a prima facie case of the Diocese’s negligence in publishing the purportedly false defamation. We find that evidence in its own invocation of the meaning of “minor.” The List itself used the word “minor” when alluding to a credible allegation of sexual abuse. And, in so using the word, the Diocese allegedly intended to assign it the definition accorded under canon law, as revealed through the affidavit of the Diocese’s bishop. Again, that definition described a “minor” as “a person who habitually lacks the use of reason.” Arguably, then, a “minor” encompasses not only those under the age of majority but also adults who habitually lack the use of reason. Knowing this definition, the Diocese nonetheless incorporated the term “children” into its public rhetoric about the List. Again, one media outlet announced that “according to the Lubbock Diocese,” “four priests . . . and one deacon have credible

allegations against them . . . of sexual abuse against ***children***.” (Emphasis added). Additionally, a Diocese representative also told the outlet that the church was “safe for ***children***.” (Emphasis added). So too did the Diocese declare in its January 31st press release that it was working “to protect ***children*** from sexual abuse.” (Emphasis added). While all “children” may be minors within the canon law’s definition of “minor,” not all “minors” are children per that same definition.<sup>7</sup> Yet, the purported “credible allegation” against Guerrero involved an adult around 41 years old.

Given our earlier discussion about the general public perception of the word “children,” the Diocese’s multiple references to “children” while discussing the List, and its knowledge that Guerrero’s supposed victim was an adult, there is some evidence of record from which a fact-finder could reasonably infer that the Diocese was negligent. There is evidence that the Diocese knew or should have known 1) the difference between “minors” and “children” while referring to “children” and 2) that by speaking about sexual abuse of “children” the public could reasonably perceive the discussion to be about clerics who sexually abuse infants, pre-teens, and those under the age of majority, not adults. Thus, evidence exists of record from which one could reasonably infer that the Diocese publicly portrayed Guerrero as having abused “children” or people under the age of majority.

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<sup>7</sup> The Diocese does not argue that canon law or other religious tenet also defines “child” or “children” as including certain adults.

In short, Guerrero carried his burden imposed by the TCPA. The record contains clear and specific evidence creating a prima facie case on each element of defamation.

*Intentional Infliction of Emotional Distress*

Regarding the claim of intentional infliction of emotional distress, we need not dwell upon it for long. In lieu of our engaging in an extended explanation regarding its components and whether the record contains evidence of each, we simply focus on one elemental aspect of the claim. That aspect is the mens rea. It requires proof that the defendant acted intentionally or recklessly. *Hersh v. Tatum*, 526 S.W.3d 462, 468 (Tex. 2017). And, to establish it, the plaintiff must proffer evidence illustrating the emotional distress was the intended or primary consequence of the conduct. *Standard Fruit & Veg. Co. v. Johnson*, 985 S.W.2d 62, 67 (Tex. 1998); *accord Fishman v. C.O.D. Capital Corp.*, No. 05-16-00581-CV, 2017 Tex. App. LEXIS 6661, at \*14 (Tex. App.—Dallas July 18, 2017, no pet.) (mem. op.) (stating the same); *Vaughn v. Drennon*, 372 S.W.3d 726, 732 (Tex. App.—Tyler 2012, no pet.) (stating the same). That is, recovery is available when the defendant desired or anticipated that the plaintiff would suffer severe emotional distress. *Standard Fruit & Veg. Co.*, 985 S.W.2d at 67. It is not enough that the emotional distress emanates from, is derivative of, or “incidental to the intended or most likely consequence of the” defendant’s conduct. *Id.*; *Vaughn*, 372 S.W.3d at 732. In the latter situations, the distress is the consequence of some conduct, it is not the reason for the conduct. And, because it is the consequence of, as

opposed to the reason for, the conduct, the claim of intentional infliction of emotional distress is unavailable. As said by our Supreme Court in *Hoffman-La Roche, Inc. v. Zeltwanger*, 144 S.W.3d 438 (Tex. 2004), “[w]here the gravamen of a plaintiff’s complaint is really another tort, intentional infliction of emotional distress should not be available. *Id.* at 447-48; see *Warner Bros. Entm’t, Inc. v. Jones*, 538 S.W.3d 781, 814 (Tex. App.—Austin 2017, pet. granted) (holding that Jones did not establish a prima facie case of intentional infliction of emotional distress because the facts underlying that claim were the same facts upon which he based his claim of defamation); *Bilbrey v. Williams*, No. 02-13-00332-CV, 2015 Tex. App. LEXIS 2359, at \*39-40 (Tex. App.—Fort Worth Mar. 12, 2015, no pet.) (mem. op.) (holding the same). Instead, there must be proof that the defendant wanted the plaintiff to suffer or anticipated that he would suffer severe emotional distress. In that situation, the distress is not merely derivative from some other tort; it is the tort’s aim.

Here, neither party cited us to any evidence indicating that the Diocese intended for Guerrero to experience emotional distress or anticipated that such distress would be the primary consequence of the alleged defamation. Nor did our own search of the record uncover any. What it did reveal, though, was that the facts underlying the allegation of severe emotional distress were the very same ones forming the basis of Guerrero’s defamation claim. In other words, his alleged distress derived from being defamed. So, like *Bilbrey* and *Warner Bros.*, the record before us lacks prima facie evidence of an element to

Guerrero's chose in action sounding in the intentional infliction of emotional distress.

*The Diocese's Defense*

Having found that one of Guerrero's causes of action survives dismissal, we now determine if the Diocese raised some defense or other basis barring recovery. It attempted to do so by asserting the doctrine of ecclesiastical abstention. But, as we explained in our earlier opinion in Cause No. 07-19-00307-CV, the doctrine does not apply to the circumstances at bar.

*Conclusion*

In ordering that the motion to dismiss be denied, the trial court did not address individually the two causes of action Guerrero averred. Nevertheless, we affirm its order to the extent that it retained the claim of defamation but reverse it to the extent that it retained the cause sounding in the intentional infliction of emotional distress. We also dismiss, with prejudice, the latter claim and "remand the case to the trial court for further proceedings consistent with this opinion, including consideration of the defamation . . . claim[] and determination of the attorneys' fees and sanctions that must be awarded under Section 27.009 in connection with the dismissal of the other claim[]." *Warner Bros. Entm't., Inc.* 538 S.W.3d at 818.

Brian Quinn  
Chief Justice

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Filed 7/18/2019 11:30 a.m.  
Barbara Sucay  
District Clerk  
Lubbock County, Texas  
dm

NO. 2019-534,677

JESUS GUERRERO	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
V.	§	237 <sup>th</sup> JUDICIAL DISTRICT
	§	
DIOCESE OF	§	
LUBBOCK,	§	OF LUBBOCK COUNTY,
Defendant.	§	TEXAS

**ORDER DENYING DEFENDANT'S PLEA  
TO THE JURISDICTION**

CAME TO BE HEARD on the 25<sup>th</sup> day of June 2019, Defendant's Plea to the Jurisdiction this case. After considering the motions, briefs and arguments of counsel, the court finds that above referenced motions shall be denied.

IT IS THEREFORE ordered, adjudged and decreed that Defendant's Plea to the Jurisdiction is **DENIED**.

Signed on the 16<sup>th</sup> day of July, 2019.

S/Les Hatch  
District Judge

**(LIST PUBLISHED 1/31/19)**

**Names of All Clergy with a Credible Allegation  
of Sexual Abuse of a Minor**

The Diocese of Lubbock extends an apology to all the victims of abuses, especially minors, for what you have suffered and for the way Church leadership has sometimes failed you in the past.

Bishop Coerver, in his role as chief shepherd of the diocese, is committed to doing everything in his power so that the sexual abuse of minors never happens again.

The Diocese of Lubbock in an effort for transparency asked our diocesan attorney to engage the services of a retired law enforcement professional and a private attorney to review all clergy files for any credible allegations of abuse of minors.

This list includes the names of priests or deacons against whom a credible allegation has been made since the Diocese of Lubbock was created on June 17, 1983.

Also, a priest or deacon's name only appears on the list if the diocese possesses in its files evidence of a credible allegation.

A "credible allegation" is one that, after review of reasonably available, relevant information in consultation with the Diocesan Review Board or other professionals, there is reason to believe is true.

Prior to 1983, offenders who served in the area now the Diocese of Lubbock should be published on lists from the Diocese of Amarillo or the Diocese of San Angelo.

Currently, there is no pending litigation against the Diocese of Lubbock for any matter pertaining to the sexual abuse of a minor.

However, in spite of our best efforts, we realize there could be an omission.

Therefore, if you know of a minor who has been sexually abused by a member of the clergy, or by anyone working or volunteering on behalf of the diocese, please encourage the victim or the victim's family to first, contact the civil authorities (your local police or sheriff's department and call the Texas Department of Family and Protective Services at 1-800-252-5400).

Then, second, contact our Victim Assistance Coordinator, Oscar Reyes at (806) 543-9178.

#### Priests

Name: Alphonse Boardway, OFM, cap  
 Assignments: Saint George, Haskell – 1987 to 1989;  
 Saint Ann, Stamford – 1987 to 1989  
 Status: Removed from Ministry – 1989  
 Died – 1997

Name: Nelson Diaz  
 Assignments: Saint Elizabeth, Lubbock – 2001;  
 Our Lady of Grace, Lubbock – 2002;  
 Saint Francis, Wolfforth –



2003 to 2011;  
 San Ramon, Woodrow – 2003 to 2011  
 Status: Permanently Removed from Ministry  
 – 2011

Name: Patrick Hoffman  
 Assignments: Sacred Heart, Plainview – 1983 to  
 1986  
 Status: Removed from Ministry – 1987  
 Died – 2005

Name: Omar Quezada  
 Assignments: Our Lady Grace, Lubbock – 2003  
 (Never served)  
 Status: Permanently Removed from Ministry  
 – 2003

#### Deacons

Name: Jesus Guerrero  
 Assignments: Our Lady of Grace, Lubbock – 1997 to  
 2003  
 Suspended – 2003  
 San Ramon, Woodrow – 2006 to 2007  
 Status: Permanently Removed from Ministry  
 – 2008

The names of the following credibly accused, who  
 served in the area of the Diocese of Lubbock prior to  
 its creation in 1983, are listed on the Diocese of  
 Amarillo web site.

Rodney Howell  
 Aiden McGuire, SAC  
 Terry Burke  
 J. Melton Silva

Alfredo Prado

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Fw: Diocese of Lubbock publishes list of clergy members credibly accused of sexual abuse of a minor

Julio Iglesias

Thu 1/31/2019 2:12 PM

To: News-fox34.com <News@fox34.com>;

4 attachments (376 KB)

image001.jpg; image003.png; image006.emz;  
Letter.pdf

Thank you,  
Craig "Julio" Iglesias  
News Operations Manager  
Fox 34 News  
julio@fox34news.com  
www.fox34.com  
806-748-2461

From: Lucas Flores <LFlores@catholiclubbock.org>  
Sent: Thursday, January 31, 2019 2:09 PM  
To: Lucas Flores  
Subject: Diocese of Lubbock publishes list of clergy members credibly accused of sexual abuse of a minor



Roman Catholic  
Diocese of Lubbock

Most Rev. Robert  
Coerver

Bishop of Lubbock

Lucas Flores  
Director  
Ext. 219  
lflores@catholiclubbock.org

Pat Behnke  
Secretary  
Ext. 218  
pbehnke@catholiclubbock.org

#### NEWS RELEASE

Date: January 31, 2019

From Lucas Flores, Director of Communications

Diocese of Lubbock publishes list of clergy members credibly accused of sexual abuse of a minor

LUBBOCK-The Roman Catholic Diocese of Lubbock published the names of clergy members credibly accused of sexual abuse of a minor on January 31, 2019 on the diocese's website.

The Diocese of Lubbock joins the 15 dioceses and archdioceses in the state to release names of clergy who have been credibly accused of sexually abusing a minor, going back at least to 1950 or to the year of the establishment of the diocese.

The list in the Diocese of Lubbock goes back to 1983.

The bishops' decision was made in the context of their ongoing work to protect children from sexual abuse, and their efforts to promote healing and a restoration of trust in the Catholic Church.

In a letter included with the publishing of the list, Most Rev. Robert Coerver, Bishop of Lubbock, wrote, that the release of these names—which is occurring in all the dioceses of Texas—is a good-faith effort on the part of the Bishops of Texas to increase transparency and help to restore some confidence among the ranks of the Faithful, that the administrations of our dioceses are serious about ending the cycle of abuse in the Church and in society at large, which has been allowed to exist for decades.

"I realize that this release of names will be a source of pain for victims, survivors, and their families," Bishop Coerver wrote. "I realize that this might also be occasion for more victims to come forward and to be appropriately ministered to. We continue to pray for victims and survivors of abuse of any kind and especially for those families whose trust in the Church has been broken."

In the letter, Bishop Coerver also encouraged anyone who has been abused by anyone acting in the name of the Catholic Church, especially by members of the clergy, to report that abuse to local law enforcement authorities.

Those persons reporting abuse in the Diocese of Lubbock— after contacting local law enforcement — should also contact Victims Assistance Coordinator Mr. Oscar Reyes, at (806) 543-9178.

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Also attached is Bishop Coerver's Letter to the people of the Diocese of Lubbock.



Lucas Flores  
Diocese of Lubbock  
Director, Office of Communications  
(806) 792-3943 [www.catholiclubbock.org](http://www.catholiclubbock.org)

**BUSINESS RECORD AFFIDAVIT**

Before me, the undersigned authority, personally appeared Russell Poteet (person signing affidavit) who being by me duly sworn, deposed as follows:

I, the undersigned, am over eighteen (18) years of age, of sound mind, capable of making this Affidavit, and personally acquainted with the facts herein stated and do state that the facts in this Affidavit are true and correct to the best of my knowledge.

I am the Custodian of Records for KLBK/KAMC TV. Attached hereto is the SanDiskSecureAccessV2.0, concerning Jesus Guerrero. These records are kept in the regular course of business at KLBK/KAMC TV for KLBK/KAMC TV and it was in the regular course of business at such address for an employer or representative with personal knowledge of the act, event, condition or opinion recorded to make the memorandum of record or to transmit information hereof to be included in such memorandum or record, and the memorandum or record was made at or near the time of the act, event, condition or opinion, or reasonably soon thereafter. The records attached hereto are the original or exact copies of the originals and nothing has been removed from the original file before making these true and correct copies.

S/ Russell Poteet  
Signature of Custodian

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SUBSCRIBED and SWORN TO before me, the  
undersigned authority, on this 18<sup>th</sup> day of June, 2019.

S/ Maria Dolores R(ineligible)  
Notary Public In and for the State of Texas.

My commission expires: 10/24/2022



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<https://www.youtube.com/watch?v=fnN1XcCuIx8>

KAMC News:

January 31, 2019; KAMC 6 P.M.

FS/VO/SOTVO/SOT

1 MON

Bryan

Avery, the 'Catholic Diocese of Lubbock' and Amarillo.. Today released the names of clergy in the area..

Who have ever been \*credibly accused of sexual misconduct.

Take Boxes

KAMC's 'Tori Larned' joins us live from the Diocese tonight.

And Tori, how many people made the list?

Take live

Tori

Bryan, five clergy members of the Lubbock Diocese have been 'credibly accused' of sexual abuse of a minor. They say a few of them were also charged or arrested.

(Priests Names Reviewal VO)

Take FS

Clergy on the list include \*Alphonse Boardway and \*Patrick Hoffman who've both died. Omar Quezada, Jesus Guerrero, and Nelson Diaz – Who was the last to be removed from the ministry in 2011.

Take VO

The Chancellor for the Diocese says all the individuals abused were minors. He described 'credibly accused' as someone who admitted to the abuse, are found guilty by the court, or who were witnessed committing the crime. Lawyers hired by the Diocese investigated these cases and turned them over to authorities. In a statement, the Diocese says, 'the scourge of abuse must be stopped.' However, out of respect to the victims and survivors, they have to handle the cases with care.

(Priests Names Reveal SOTVO)

Take SOT

Marty Martin, Chancellor, Catholic Diocese of Lubbock: You have to keep in mind, sometimes, the authorities are involved but because of the age of the victims, the parents don't want anything released and the only way to ensure that is to not proceed with any legal court system or situation because then something is going to leak out and they don't want the embarrassment for themselves or their children.

Trailing VO

The Lubbock Diocese is one of 15 across the state releasing names of clergy who've been credibly accused.

Lubbock Bishop Reverend Robert Coerver, released a statement saying he knows this will be a 'source of pain' for victims, survivors and their families...

But hopes this will help victims come forward, and 'promote healing and a restoration of trust in the Catholic Church.'

When we spoke with Chancellor Martin, he echoed that feeling.

(Priests Name Reveal)

Take SOT

Marty Martin, Chancellor, Catholic Diocese of Lubbock: I certainly want people to know that the Diocese of Lubbock extend an apology to all victims. Especially to minors but to all victims. Not just because of what happened to them, but also for the fact that in the past the church needed them they failed them. That's not something we want to do or will be tolerated anymore.

Take live

Tori

The Bishop encourages anyone who has been abused by someone in the Catholic Church – to report it local law enforcement.

Some clergy members accused in Amarillo, also used to work in Lubbock.

We have the full list of those individuals on our website everythinglubbock dot com.

116a

Reporting from the Catholic Diocese of Lubbock, I'm  
Tori Larned KAMC News.

January 31, 2019; KAMC 10 P.M.

PKG

Trailing VO/Lauren  
Diocese across Texas naming clergy in their ministry  
accused of sexually abusing children.

Lauren  
Good evening, I'm Lauren Matter.

Bryan  
I'm Bryan Mudd.  
The Dioceses of Lubbock and Amarillo.. Releasing  
their own lists of clergy who have been 'credibly  
accused' of these crimes over the years.  
And it's heartbreaking.  
KAMC's 'Tori Larned' joins us with more.

Tori  
The Catholic Diocese of Lubbock releasing that list  
trying to put a stop to the sexual abuse of children in  
their ministry.  
They did not say how many victims and survivors  
there are, but they hope there will be no more.

(Clergy Names PKG)

Take PKG

Marty Martin, Chancellor, Catholic Diocese of Lubbock: The Diocese of Lubbock extend an apology to all victims.

Five members of the Catholic Church 'credibly accused' of sexually abusing children.

In the past the church needed them they failed them. That's not something we want to do or will be tolerated anymore.

A list that goes back to 1983...

Patrick Hoffman last served at Sacred Heart in Plainview from 1983 to 1986. He was removed in 1987 and died in 2005.

Alphonse Boardway's last assignment was at Saint Ann in Stamford from 1987 to 1989... He was removed from the ministry in 1989 and died in 1997.

Omar Quezada's last assignment was at Our Lady of Grace in Lubbock. He never served but was removed in 2003.

Jesus Guerrero last served at San Ramon in Woodrow from 2006 to 2007 and was removed a year later.

Finally, Nelson Diaz last served in Woodrow from 2003 to 2011... and was removed in 2011.

Marty Martin, the Chancellor with the Diocese of Lubbock believes many of these men were either arrested or charged.

Marty Martin, Chancellor for Diocese of Lubbock: Credibly accused is either the person admits to doing it, are found guilty in the court of law or the abuse has been witnessed by somebody and they testify against it. If the accusation is credible, that person is immediately removed from ministry.

In a letter, Bishop Robert Coerver Apologized: "I realize that this release of names will be a source of pain for victims, survivors, and their families. I realize that this might also be occasion for more victims to come forward and to be appropriately ministered to"

With the help of authorities, the Catholic Diocese now trying to protect children from future harm.

We do total cooperation with the authorities during the investigation.

We reached out to Lubbock police said they currently have no investigations of abuse on record for these names... and don't know if they were reported to other agencies. However they will look into this situation.

Tori

The Diocese says if you or anyone you know has been abused by anyone acting in the name of the Catholic Church.

Report them to the victim's assistance coordinator of the Diocese and to your local authorities.

March 25, 2019; KAMC 10 P.M.

VO

Bryan

A Lubbock man is suing the Catholic Diocese of Lubbock.

(Diocese Lawsuit VO)

Take VO

'Jesus Guerrero' claims that the church falsely accused him of sexual abuse.

'Guerrero' was on the list of names released by the church.. as being 'credibly accused' of sexually abusing a minor.

But the lawsuit states 'Guerrero' has never been accused of sexual abuse or misconduct against a minor..

And has never even been investigated for those crimes.

He accuses the Dioceses of libel and defamation.. and is seeking at least a million dollars.

120a

<https://www.youtube.com/watch?v=AWPdTAFGTPA>

KLBK News:

January 31, 2019; KLBK 6 P.M.

VO/SOT/FS

Terri

Good evening, I'm Terri Furman. The Catholic Diocese of Lubbock released names of priests today who are \*credibly\* accused of sexual abuse. The Diocese has been creating this list for us since October.

Our Mari Salazar has the names on the list for us tonight.

Take boxes

She joins us from the Diocese. Mari, these men were all permanently removed from ministry.

Take live

Mari

Terri, they were.. And some of the cases date back to the 80's. But no one matter the circumstance..

The Diocese reviewed any accusation against a church member.

(Priest Allegations VO)

Take VO



This is the list of priest\* names released here in Lubbock --

‘Alphonse Boardway’ is the first name.  
His last assignment was ‘Saint Ann Catholic Church’ in Stamford – Texas..  
He was removed from ministry in 19-89.. and he passed away in 19-97.

Second is ‘Nelson Diaz’  
His last assignment was ‘San Ramon’ in Woodrow.  
He was removed from ministry in 20-11.

Next- ‘Patrick Hoffman’.  
His last assignment was Sacred Heart in Plainview.  
He was removed from ministry in 19-87.. and he died in 2005.

Fourth -- ‘Omar Quezada’  
His last assignment was ‘Our Lady of Grace in Lubbock’.. The release says he never served..  
But was permanently removed from the ministry in 2003.

Lastly – ‘Jesus Guerrero’.. He was a Deacon.  
His last assignment was also ‘Our Lady of Grace’.  
He was removed from ministry in 2008.

The Chancellor with the Diocese told me this afternoon.  
He wants victims to know the Diocese wont allow this behavior.

(Priest Allegations SOT)

Take SOT

Marty Martin/Diocese of Lubbock Chancellor: "The Diocese of Lubbock extends an apology to all victims. Especially the minors, but to all victims. Not just of what happened to them, but also for the fact in the past many times, the church leaders have failed them and that's not something we want to do and that's something that won't be tolerated anymore."

Take FS

Bishop Coerver says he's out of the country right now..

But says in a statement in part quote..

He continues to pray for the victims and survivors of abuse of any kind..

Especially for those families whose trust in the church has been broken.

His full statement is on our website.

Take live

Mari

Some of the men listed have been charged or arrested for the crimes.

The Amarillo Diocese also released a list of names in their area..

Several also served in the Lubbock area at some point in time.

You can find that list on our website everything Lubbock dot com.

For now reporting live from the Diocese of Lubbock.

I'm Mari Salazar, KLBK news.

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January 31, 2019; KLBK 10P.M.

PKG

Terri

Good evening, I'm Terri Furman.

The Catholic Diocese of Lubbock released names of clergy members today who are \*credibly\* accused of sexual abuse.

The list has been in the making since last fall.

The Diocese trying to be as open as possible with their community.

Hoping to prevent future child abuse.

Our Mari Salazar has been following this story for us.

Mari, how many names are on the list?

Huge

Mari

Terri, there were 4 names of priests and one deacon.

The Amarillo Diocese also released a list.

Several had served in the Lubbock area at some point in time.

When I spoke with the Chancellor of the Diocese in Lubbock..

He says he wants victims to know they won't allow this behavior.

(Priest Accusations PKG)

Take PKG

Marty Martin/Diocese of Lubbock Chancellor: "The Diocese of Lubbock extends an apology to all victims."

Martin says the victims were all minors.

Marty Martin/Diocese of Lubbock Chancellor: "To all victims. Not just of what happened to them, but also for the fact in the past many times, the church leaders have failed them and that's not something we want to do and that's something that won't be tolerated anymore."

These are all the men accused\* of sexual abuse. The church says.

'Alphonse Boardway'... His last assignment was 'Saint Ann Catholic Church' in Stamford – Texas.. Removed from ministry in 19-89.. and he passed away in 19-97.

'Nelson Diaz'  
His last assignment was 'San Ramon' in Woodrow.  
He was removed from ministry in 20-11.

'Patrick Hoffman'  
His last assignment was 'Sacred Heart' in Plainview.  
He was removed from ministry in 19-87.. and died in 2005.

Fourth – 'Omar Quezada'  
His last assignment was 'Our Lady of Grace' in Lubbock... The release says he never served.  
But was permanently removed from ministry in 2003.

Lastly – 'Jesus Guerrero'.. He was a Deacon.  
His last assignment was also\*'Our Lady of Grace'.  
He was removed from ministry in 2008.

Chancellor Martin says a credible allegation means a couple different things.

Marty Martin/Diocese of Lubbock Chancellor: "Either the person admits to doing it, they are found guilty in a court of law or -- (correcting himself) -- or the abuse has been witnessed by someone and they testify against it."

The list released by the Catholic Diocese of Lubbock is meant to restore faith in church leaders.

Huge

Mari

Bishop Coerver says he's out of the country right now..

But says in a statement..

In part quote..

Take FS

He continues to pray for the victims and survivors of abuse of any kind. Especially for those families whose trust in the church has been broken  
His full statement is on our website.

Take FS

Lubbock police also responded to the list of names released..

They say quote in part..

They "are currently searching through records. At this time, LPD does not appear to have any past or

126a

current investigations of abuse occurring within the City of Lubbock by these individuals.”

Huge

Mari

The Diocese says if you or anyone you know has been abused by someone acting in the name of the Catholic Church..

Report them to the victim’s assistance coordinator of the Diocese.

March 25, 2019 KLBK 10 P.M.

FS/VO

(Diocese FSVO)

Take FS

Terri

A Lubbock man is suing the Catholic Diocese of Lubbock –

Jesus Guerrero says the church falsely accused him of sexual abuse.

Take VO

All of the Texas Dioceses were ordered to release the names of “credibly accused” clergy.

Guerrero was on the list.

He was listed as a Deacon that was removed from ministry.

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One part of the lawsuit said Guerrero was never accused of sexual abuse or been investigated in any way for misconduct against a minor.

The lawsuit seeks 1-million dollars or more.



Roman Catholic  
Diocese of Lubbock

**Most Rev. Robert Coerver**  
Bishop of Lubbock

**Lucas Flores**  
Director  
Ext. 219  
lflores@catholiclubbock.org

**Pat Behnke**  
Secretary  
Ext. 218  
pbehnke@catholiclubbock.org

#### NEWS RELEASE

Date: October 10, 2018

From: Lucas Flores, Director of Communications

**Texas Catholic dioceses announce plan to  
release names of clergy credibly accused of  
sexual abuse of minors**

Lists of clergy will cover at least 1950 to 2018

LUBBOCK- The 15 Catholic dioceses in Texas and the Ordinariate of the Chair of St. Peter made the decision on Sept. 30 to release names of clergy who



have been credibly accused of sexually abusing a minor, going back at least to 1950.

The bishops' decisions was made in the context of their ongoing work to protect children from sexual abuse, and their efforts to promote healing and a restoration of trust in the Catholic Church.

"This is an action in response to the faithful's call for greater accountability and transparency," said Cardinal Daniel DiNardo, archbishop of Galveston-Houston. "Every bishop in our state has made a statement expressing his concern for all who have been hurt and I want to express my personal sorrow at such fundamental violations of trust that have happened. We are completely committed to eradicating the evil of sexual abuse in the church and promoting healing among the faithful and those injured by this crime."

With 8.5 million Catholics and 1,320 Catholic parishes in Texas, the endeavor to compile a comprehensive list of clergy who have been credibly accused of sexually abusing a minor represents a major project. All dioceses will publish their lists by Jan. 31, 2019.

"It will take some time for files to be reviewed, and there may be people who come forward with new information following this announcement. My brother bishops in Texas and I agree that transparency in this painful matter of sexual abuse can assist with healing for survivors and transformation for our Church," explained Archbishop Gustavo Garcia-Siller, MSPS, archbishop of San Antonio.

The release of names of clergy credibly accused of sexually abusing a minor is part of an ongoing effort by the dioceses to provide an even safer environment for children. These lists will be updated as new information becomes available.

For information on reporting child abuse in Texas, please visit: <http://txcatholic.org/how-to-report>

From Most Rev. Robert Coerver, Bishop of Lubbock:

*The care of members of the Catholic Church on the South Plains is the top priority for the Roman Catholic Diocese of Lubbock and for me, the Bishop of Lubbock.*

*Today's announcement is a message of action that will help the Church continue to work to nurture an environment of transparency and accountability which is necessary especially to rebuild the trust of those who have experienced abuse.*

*As we continue this work, we must move forward in a spirit of justice and reparation, while also preserving principles of mercy and compassion.*

*The Catholic Church in the United States has worked to provide safe environments, especially over the last 15 years. We will remain vigilant to provide an even safer environment for every child in our care.*

*We pray for victims and survivors of abuse of any kind, and we pray especially for those families whose trust in the Church has been broken. We also pray for the Holy Spirit to renew the Church as we work to heal these wounds to the Body of Christ.*

131a

**Catholic Pastoral Center** 4620 Fourth Street •  
Lubbock TX 79416

**Mailing Address** P.O. Box 98700 • Lubbock TX  
79499-8700 • 806-792-3943 •  
[www.catholiclubbock.org](http://www.catholiclubbock.org)

Bishop: 'Lubbock clergy could be on list of accused priests'

Fox 34 News

Bishop: 'Lubbock clergy could be on list of accused priests'

By Megan Payne Connect Posted: Oct 10, 2018 8:35 PM CDT

Updated: Oct 10, 2018 8:35 PM CDT

Lubbock, Texas – Texas Catholic dioceses plans to release names of clergy credibly accused of sexually assaulting a minor by the end of January. The accusations will date back to 1950. With more than 8 million Catholics in our state, and nearly 4,000 clergy, it is a tall order.

On this list Bishop Robert Coerver expects cases from here in Lubbock.

"It will be part of what we reveal" Coerver said. "I don't know that there are to many. We've gotta have objective people go through our files."

Coerver said it is a step the church is willing to take to ensure children are safe.

"We're giving a whole lot more credence to civil *law and* to civil society norms and expectations," Coerver said, "In the past, I'm afraid the church might have felt they're above those expectations and now we've discovered that we can't be and we shouldn't be."

For Lubbock rape crisis center, Voice of Hope, 38 percent of it's cases in 2017 were minors Community Outreach Coordinator Leslie Timmons believes it is important for any religious entity to create a safe environment for victims.

"You know the victims that might have been affected are probably in that age range when the assault took place," Timmons said, "You know we're just here to offer support for the community to offer victims help."

Coerver said the diocese is working to offer healing within the church. There is now a victims assistance coordinator who is dedicated to tending to those claiming abuse.

"We've got our safe environment training that all of our clergy, all of our staff, most of our volunteers have to through and it's an extensive training program that involves background check as well," Coerver said.

Coerver encourages survivors to report abuse so the proper steps can be taken before a list is release.

"We are doing this out a sense of transparency and accountability, and my hope and prayer is that we can move forward with justice and sense of reparation, but also maintaining principles of mercy and compassion," Coerver said.

The Diocese of Lubbock was founded in 1983 and this list will go back as early as 1950, Coerver said cases withing that 30 year gap would have been reporter in either Amarillo or San Angelo.

Via Diocese of Lubbock

To report known or suspected neglect or abuse of a minor (under age 18) or vulnerable adult, call the Texas Department of Family and Protective Services (DFPS) Child/Vulnerable Adult Abuse Hotlines at 1-800-252-3400 or your local law enforcement agency. If there is an immediate danger, call 911.

Once Local Law Enforcement Agency, 911 and/or the Child Abuse/Vulnerable Adult hotline has been called regarding present or past sexual abuse or sexual assault allegedly by any clergy, religious, diocesan/parish employee or volunteer, contact the Diocesan Victim Assistance Coordinator, Oscar Reyes at 806-543-9176 wo will initiate diocesan procedures.

[www.fox34.com/story/39288891/bishiolubbock-clerfy-could-be-on-list-of-accused-priests](http://www.fox34.com/story/39288891/bishiolubbock-clerfy-could-be-on-list-of-accused-priests)

KLBK NEWS

THE ROMAN CATHOLIC DIOCESE OF LUBBOCK  
PLANS TO RELEASE NAMES OF ACCUSED  
PRIESTS

By: Mari Salazar

Posted: Oct 10, 2018 / 10:34 PM CDT / Updated: Oct  
10, 2018 / 10:34 PM CDT

The Catholic Diocese of Texas plans to release names of priests accused of sexual abuse on January 31, 2019. The Roman Catholic Diocese of Lubbock plans to release names, as well. The Bishop of Lubbock said they want to restore trust in the church and protect children from crime.

RELATED:

<https://www.everythinglubbock.com/news/local-news/lubbock-diocese-statement-on-names-of-clergy-accused-of-sexual-abuse/1513124387>

Bishop Robert Coerver said they want to provide a safe place for everyone and the first step is to be transparent and help the victims through the healing process.

“That trust has been damaged especially through the events of this summer that have been widely publicized,” said Coerver.

<https://www.everythinglubbock.com/news/klbk-news/the-roman-catholic-diocese-of-lubbock-plans-to-release-names-of-accused-priests/>

Names of All Clergy with a Credible Allegation of  
Sexual Abuse of a Minor or a Vulnerable Adult  
*Revised April 10, 2019*

Priests

Name: Alphonse Boardway, OFM, cap  
Assignments: Saint George, Haskell – 1987 to 1989;  
Saint Ann, Stamford – 1987 to 1989  
Status: Removed from Ministry – 1989  
Died – 1997

Name: Nelson Diaz  
Assignments: Saint Elizabeth, Lubbock – 2001;  
Our Lady of Grace, Lubbock – 2002;  
Saint Francis, Wolfforth –  
2003 to 2011;  
San Ramon, Woodrow – 2003 to 2011  
Status: Permanently Removed from Ministry  
– 2011

Name: Patrick Hoffman  
Assignments: Sacred Heart, Plainview – 1983 to  
1986  
Status: Removed from Ministry – 1987  
Died – 2005

Name: Omar Quezada  
Assignments: Our Lady Grace, Lubbock – 2003  
(Never served)  
Status: Permanently Removed from Ministry  
– 2003

Deacons

Name: Jesus Guerrero



Assignments: Our Lady of Grace, Lubbock – 1997 to  
2003  
Suspended – 2003  
San Ramon, Woodrow – 2006 to 2007  
Status: Permanently Removed from Ministry  
– 2008

### **Clarification**

On January 31, 2019, the Diocese of Lubbock posted a list of names of all clergy with a credible allegation of sexual abuse of a minor. A determination that an allegation against a member of the clergy is credible, and therefore, should be published, is not equivalent to a finding by a judge or jury that the cleric is liable for sexual abuse of a minor under civil law or has committed criminal sexual abuse of a minor under the Texas Penal Code unless specifically indicated.

Under canon law (Article 6 of the Substantive Norms of Sacramentorum sanctitatis tutela) a person who habitually lacks the use of reason is considered equivalent to a minor. Canon law, in addition to civil law, is binding on the Diocese of Lubbock and its clerics.

The January 31 list included Jesus Guerrero, a deacon who was suspended from ministry in 2003 and permanently removed from ministry in 2008. The Diocese of Lubbock has no information of a credible allegation of sexual abuse of a minor below the age of eighteen (18) by Jesus Guerrero.

The Diocese of Lubbock has concluded there is a credible allegation against Jesus Guerrero of sexual

abuse of a person who habitually lacks the use of reason.

The Diocese of Lubbock regrets any misunderstanding that may have arisen from the January 31 posting.

The names of the following credibly accused, who served in the area of the Diocese of Lubbock prior to its creation in 1983, are listed on the Diocese of Amarillo web site.

Rodney Howell  
Aiden McGuire, SAC  
Terry Burke  
J. Melton Silva  
Alfredo Prado

STATE OF TEXAS                   §  
  §  
COUNTY OF LUBBOCK         §

**AFFIDAVIT OF JESUS GUERRERO**

“My name is Jesus Guerrero and my birthday is July 3, 1944. I am currently 74 years old.

“I am and have been a lifelong resident of Lubbock County, Texas.

“I have been married to my wife Simona Guerrero for 57 years and we raised 4 children. We now have 14 grandchildren and 18 great grandchildren.

“I worked for Hamilton Acoustical and Henley for 35 years and retired with an excellent work history.

“On or about 1990, I became interested in becoming a deacon and began my deacon service in 1997. A deacon is strictly a voluntary position and I was not provided a salary or a wage for being a deacon.

“I was initially assigned to Our Lady of Grace here in Lubbock, Texas.

“I have never been accused, investigated, criminally charged or questioned regarding any accusations of sexual abuse against any minor.

“In February 2003, I was informed, via letter, that there was a complaint against me regarding an allegation of sexual misconduct involving a lady named Rachel Placencio, who was in her 40’s at the time.

“I denied and continue to deny that anything inappropriate happened between me and Ms. Placencio.

“I have known Ms. Placencio and her family for a long time, and in 2003, she told me that her father was sick, and she asked if I would accompany her and her father to the doctor. We had a friendly relationship with her and her family. As far as I knew, she was never declared incompetent or insane. She would make strange comments and ramble sometimes but appeared to be able to communicate with me effectively regarding daily life. In fact, I knew that she was charged with caring for her father because at the time, her mother and father had separated. I knew that she took care of her father and all his needs, including paying bills, grocery shopping and keeping up with her father’s appointments. I also knew she was active in the Church and was a choir member at the 11:00 o’clock mass. I never observed her have any trouble interacting with members of the church or the choir. In fact, I knew that she maintained a job at Josie’s Restaurant. The church never notified me that Ms. Placencio was a “vulnerable adult.”

“I had been speaking and helping Ms. Placencio for a few weeks, until his appointment. I helped take her father to the doctor and it was recommended that

he have heart surgery and he did. After the surgery I had no contact with Ms. Placencio on any meaningful level.

“During the time that her father was ill, Ms. Placencio would come to me for spiritual guidance. Ms. Placencio would say things like she saw angels and demons and make sexual comments, and I would tell her that it was not appropriate and that she should not be talking about sexual things.

“We never engaged in any physical sexual conduct whatsoever.

“I was never informed of what the actual allegation was – I say down in front of a board and they asked a lot of questions, but I was never informed as to what the exact allegation was about. I asked repeatedly, who, what, when and where and I was never informed of any specifics. The only thing they told me was that there was a complaint.

“I was suspended by the Bishop in February of 2003 and reinstated as s deacon in January of 2007. The Bishop asked me to attend counselling with J. Maria Bermudez, Ph.D. and I did. My understanding is that she asked for more information and the Church was unable to provide any “details” of the allegation of misconduct.

“In 2007, I was assigned to Woodrow, Texas. Bishop Placido called me and said that was an allegation that I had been at Rachel Placencio’s house. At that time, I hadn’t seen Ms. Placencio or talked to her since 2003. My wife and I had run into her

occasionally in the neighborhood, but never had any meaningful conversations with her since after the 2003 allegation.

“On January 31, 2019, the Diocese of Lubbock posted a list of people they described as “Names of all Clergy with a Credible Allegation of Sexual Abuse of a Minor” and I heard and saw for the first time on the local news (Channel 34 – FOX) my name. On the television was Marty Martin, a Chancellor of the Catholic Church, saying that I had been credibly accused of sexual assault against a minor.

“When I first saw this, my heart stopped for a minute and after I saw the broadcast, I was shocked, confused, hurt and I knew that it wasn’t true.

“I have 3 girls and a boy. All of my children called me and asked me about the allegations and expressed that they were horrified and embarrassed.

“After the allegations came out, people at the Church and the community began to shun me, look at me funny and began to avoid me. We were going to St. Joseph’s Catholic Church, but the environment became so tense, that we decided to move to Our Lady of Guadalupe, in Lubbock, Texas.

“Since the allegation has come out, I have suffered ailments because of the stress. I have had difficulty sleeping because of these allegations. Because of my heart condition, the doctor will not prescribe me any medicine for my sleeplessness, and I continue to have sleepless nights. I experience

nausea, dizziness, anxiety and depression because of these false allegations.

“When I think about the false allegations levelled against me, I get severe headaches and experience dizziness that requires my wife to help me. I have talked to my doctor about the stress of this event and the stroke that I suffered in March of this year. My doctor says that the stress of this situation was a contributing factor to the stroke. I have continued to suffer from high blood pressure. In April of this year, my blood pressure went too high and I was re-admitted because the doctors couldn't get my blood pressure under control.

“At this stage in my life, I am concerned about the legacy that I leave for my children. There is a publication out there that says that I have been credibly accused of sexual abuse of a minor and that is not the legacy that I want to leave, nor is it the truth. My legacy has been damaged because of these false accusations.

WITNESS MY HAND this 18<sup>th</sup> day of June, 2019.

S/Jesus Guerrero  
Affiant

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STATE OF TEXAS           §  
                                     §  
COUNTY OF LUBBOCK   §

**ACKNOWLEDGMENT**

BEFORE ME, the undersigned authority, on this day personally appeared Jesus Guerrero, known to me to be the person whose name is subscribed to the above and foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and considerations therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE  
this 18<sup>th</sup> day of June 2019.

S/Patricia Mojica  
Notary Public in and for the State of Texas



NO. 2019-534,677

JESUS GUERRERO	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
V.	§	237 <sup>th</sup> JUDICIAL DISTRICT
	§	
DIOCESE OF	§	
LUBBOCK,	§	OF LUBBOCK COUNTY,
Defendant.	§	TEXAS

**PLAINTIFF'S ORIGINAL PETITION**

**TO THE HONORABLE JUDGE OF SAID COURT:**

**NOW COMES** JESUS GUERRERO, hereinafter called ("Plaintiff" or "Guerrero"), complaining of and about DIOCESE OF LUBBOCK, hereinafter called Defendant, and for cause of action shows unto the Court the following:

**DISCOVERY CONTROL PLAN LEVEL**

1. Guerrero intends that discovery be conducted under Discovery Level 3.

**PARTIES AND SERVICE**

2. Guerrero is an Individual whose address is 1905 38<sup>th</sup> Street, Lubbock, Texas 79412.

3. The last three numbers of Guerrero's driver's license number are 653. The last three numbers of Guerrero's social security number are

060.

4. Defendant Diocese of Lubbock, is a church, lawfully doing business in Lubbock, Texas with a registered address of PO BOX 98700, LUBBOCK, TX 79499-8700. Service of said Defendant as described above can be effected by personal delivery, by serving Bishop Robert M. Coever.

### **JURISDICTION AND VENUE**

5. The subject matter in controversy is within the jurisdictional limits of this court.

6. Guerrero seeks monetary relief of over \$1,000,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees.

7. This court has jurisdiction over the parties because Defendant is a Texas resident.

8. Venue in Lubbock County is proper in this cause because the facts giving rise to this cause of action arose in Lubbock County.

### **FACTS**

9. Guerrero is a lifelong resident of Lubbock County, Texas.

10. Guerrero has been married to his wife of 57 years, Simona Guerrero, and the two raised 4 children. They now have 14 grandchildren and 18

great grandchildren.

11. Guerrero worked for Hamilton Acoustical and Henley for 35 years and retired with an excellent work history.

12. Guerrero has been a faithful servant of God in the Catholic Church his entire life. Guerrero became a Deacon in 1998 and is still active in the Guadalupanas and as Cursillistas Catholic Organizations. Additionally, Guerrero has been a Continuing Catholic Education teacher for 18 years.

13. On January 31, 2019, Diocese of Lubbock published a list of people it deemed to be “credibly accused of sexual abuse of a minor.” On or about that date, a Catholic Church Representative Marty Martin conducted a series of interviews with local media outlets, KMAC, KCBD, FOX and the Lubbock Avalanche Journal.

14. Guerrero was named on said list of alleged child molesters.

15. In said interviews, Mr. Martin indicated that all people named on said list were all credibly accused of sexual misconduct against a MINOR, including Guerrero. Further, Mr. Martin affirmatively stated, that to be “credibly accused” meant that the individual either admitted to the abuse, was found guilty in a court of law or the act of sexual misconduct was witnessed by a credible person who testified against that person.

16. On the same date, the Defendant

engaged in a press conference in Lubbock, Texas stating “[t]he Bishops’ decision was made in the context of their ongoing work to protect ***children from sexual abuse***, and their efforts to promote healing and a restoration of trust in the Catholic Church.”

17. Prior to his name appearing on the above referenced list of alleged child molesters, Guerrero ***had never been accused of sexual abuse and/or misconduct against a minor***, nor had he ever been investigated for any sexual abuse and/or misconduct against a minor.

18. ***Prior to releasing the list of alleged child molesters, the Diocese of Lubbock knew that Jesus Guerrero had never admitted, nor had he been criminally charged and further knew that no witness ever testified that Guerrero abused a minor.***

#### **JESUS GUERRERO'S CLAIM FOR DEFAMATION—LIBEL**

19. On or about January 31, 2019, Diocese of Lubbock, publicly defamed Guerrero by publishing his name on a list of alleged child molesters.

20. Guerrero has been a member of the Catholic community and a citizen of Lubbock County his entire life, and Defendant’s actions have severely damaged his reputation.

21. Guerrero is a private individual and not a public official nor public figure for any purpose.

22. Diocese of Lubbock has expressed, in written form false information about Guerrero thereby causing severe injury to Guerrero's reputation and exposing Guerrero to contempt and ridicule and has destroyed Guerrero's reputation for honesty, integrity and virtue.

23. The foregoing statements by Diocese of Lubbock were false, both in their particular details and in their main point, essence or gist in the entire context in which they were made.

24. The defamatory statements constitute defamation per se in that they falsely state that Jesus Guerrero was and had been "credibly accused" of sexual misconduct of a minor, and are therefore libelous per se.

25. The foregoing defamatory statements by Defendant were published in written form and confirmed in various news interviews by representatives of the Diocese of Lubbock. Said statements, were defamatory with regard to Guerrero in that they injured his reputation and exposed him to public hatred, contempt or ridicule. These false statements were made with the intent to impeach Guerrero's honesty, integrity, virtue or reputation. The defamatory statements are therefore libelous and libelous per se.

26. In the alternative, the foregoing statements by Diocese of Lubbock were defamatory by implication and/or by innuendo.

27. Diocese of Lubbock has failed to retract, though requested to do so, and failed to exercise ordinary care to prevent the foreseeable republication of the foregoing defamatory statements.

28. Jesus Guerrero is entitled to recover nominal, general, actual, and special damages as a result of the libel committed by Defendants.

**JESUS GUERRERO'S CLAIM FOR  
DEFAMATION—SLANDER**

29. All previous allegations are incorporated herein by reference.

30. The foregoing statements by Defendants were false, both in their particular details and in their main point, essence or gist in the entire context in which they were made.

31. The defamatory statements constitute defamation per se in that they falsely state that Guerrero was and had been “credibly accused” of sexual misconduct of a minor, and are therefore slander per se.

32. The foregoing defamatory statements by Defendant were published in oral form and confirmed in various news interviews by representatives of the Diocese of Lubbock. Said statements, were defamatory regarding Guerrero in that they injured his reputation and exposed him to public hatred, contempt or ridicule. These false statements were made with the intent to impeach

Guerrero's honesty, integrity, virtue or reputation.

33. Defendant is strictly liable for the damages caused by the slander. Alternatively, Defendants were negligent with respect to the truth or falsity of the defamatory statements of fact. Defendant knew or should have known that the defamatory statements of fact were false or were reckless.

34. Guerrero is entitled to recover nominal, general, actual, punitive, and special damages as a result of the slander committed by Defendants.

### **REQUEST FOR RETRACTION**

35. Guerrero has made a timely and sufficient request for retraction of the defamatory statements made by Defendant that satisfies any of the requirements of TEX. CIV. PRAC. & REM. CODE § 73.051 — 73.055. Guerrero requests for retraction have fallen on deaf and malicious ears. Guerrero continues to plea that Defendant retract the false, defamatory, and damaging publications described above.

### **JESUS GUERRERO'S INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS**

36. Diocese of Lubbock has imposed intentional infliction of emotional distress on Guerrero. More specifically, (1) Diocese of Lubbock acted intentionally or recklessly, (2) their conduct was extreme and outrageous, (3) Diocese of Lubbock's actions have caused Guerrero emotional

distress, and (4) the resulting emotional distress was and continues to be severe.

37. The facts as outlined herein demonstrate that Diocese of Lubbock engaged in conduct on a continuing basis, and as a continuing tort as that term is known in Texas law, which intentionally inflicted emotional distress on Guerrero. The conduct of the Diocese of Lubbock was intentional, reckless, extreme and outrageous and such conduct proximately caused severe emotional distress to Guerrero in a manner for which has no other recognized theory of redress for such emotional damages.

38. The conduct of the Diocese of Lubbock is the type of conduct that is so unique, so outrageous and egregious that it cannot be accepted in normal society and should be declared intolerable.

39. The defamation done with the intention of harming Guerrero personally, constitutes intentional infliction of emotional distress and was the proximate cause of such severe emotional distress to Guerrero and his family that no reasonable persons could be expected to endure it. Guerrero and his family have suffered emotional distress and mental anguish in the past and, in all reasonable medical probability, such emotional distress and mental anguish will have effects that will cause him and his family to suffer emotional distress and mental anguish in the future.

40. In the alternative because, Defendant engaged in a series of fact checking and legal



consultation prior to releasing the “credible accused of sexual assault on a minor” list, it had specific knowledge that Guerrero had never been accused or even investigated for sexual assault against a **minor**; as such, Defendant’s actions were done with intentional malice or wanton disregard for the truth, and as such, their conduct was outrageous.

### **DAMAGES FOR PLAINTIFF, JESUS GUERRERO**

41. All previous allegations are incorporated herein by reference.

42. Plaintiff is entitled to nominal, general damages, and actual damages resulting from Defendants' libel and slander, including compensation for injury to Guerrero’s reputation, and mental anguish. Guerrero is entitled to recover damages in an amount of money to fairly and adequately compensate him for damages suffered as a proximate result of the intentional infliction of emotional distress, such amount to be determined by the jury.

43. Guerrero is also entitled to special and consequential damages, including specifically, the pecuniary loss suffered by him because of Defendants' libel and slander.

44. In addition to the damages set forth above, Guerrero seeks to recover punitive or exemplary damages against Defendants for their conduct which constitutes malice as described herein pursuant to Chapter 41 of the Texas Civil

Practice & Remedies Code. Guerrero will ask the Court, after hearing the evidence at trial, to instruct the jury to consider the following factors in reaching their verdict: (1) the nature of the wrong; (2) the character of the conduct involved; (3) the degree of culpability of the Diocese of Lubbock; (4) the situation and sensibilities of the parties concerned; and (5) the extent to which the conduct of the Diocese of Lubbock offends a public sense of justice and propriety. A jury of Lubbock County will be asked to assess a sum of money against the Diocese of Lubbock as exemplary damages as a penalty or by way of punishment for their malicious conduct which has injured Guerrero.

45. Pleading further, and alternatively, if necessary, Defendants are guilty of misconduct which was committed knowingly, intentionally, maliciously, wantonly, fraudulently, and in reckless and callous disregard of the legitimate rights of Guerrero so far as to justify the imposition of exemplary damages. Plaintiffs seek recovery of such exemplary damages from Defendant.

### **PRAYER**

<b>WHEREFORE,</b>	<b>PREMISES</b>
<b>CONSIDERED,</b> Plaintiff, Jesus Guerrero, respectfully prays that the Defendant be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiff against Defendant for damages in an amount within the jurisdictional limits of the Court; together with pre-judgment interest at the maximum rate allowed by law; post-judgment	

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interest at the legal rate, costs of court; and such other and further relief to which the Plaintiff may be entitled at law or in equity.

Respectfully submitted,

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Guerrero

**PLAINTIFF HEREBY DEMANDS TRIAL BY JURY  
ATTORNEY LIEN CLAIMED**

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No. 07-19-00280-CV

*In the Seventh District Court of  
Appeals of Texas at Amarillo*

**DIOCESE OF LUBBOCK,**

**Appellant,**

**v.**

**JESUS GUERRERO,**

**Appellee.**

On Appeal from Cause No. 2019-534,677  
237<sup>th</sup> Judicial District Court  
Lubbock County, Texas  
Honorable Les Hatch, Judge Presiding

**BRIEF OF APPELANT**

CR:97-98. But *Patton* dealt with the “ministerial exception,” which is only a narrow part of the broader ecclesiastical abstention doctrine. *Patton v. Jones*, 212 S.W.3d 541, 547 (Tex. App.—Austin 2006, pet. denied). The cited portions of *Patton* have no relevance or application here.

The ministerial exception discussed in *Patton* applies only in cases concerning employment decisions by religious institutions. *Patton*, 212 S.W.3d at 547. When the doctrine applies, the sole jurisdictional inquiry is whether the employee is a member of the clergy or otherwise serves a “ministerial” function. *Patton*, 212 S.W.3d at 548. If the employee is a minister, then the “ministerial exception” applies, preventing secular review of the employment decision without any further question as to whether the claims are ecclesiastical in nature. *Patton*, 212 S.W.3d at 548.

The language upon which Guerrero relies is quoted from *Heard v. Johnson*, an opinion from a Washington D.C. court of appeals, setting out three requirements for application of the ministerial exception: (1) a claim flowing entirely from an employment decision between the church and its pastor; (2) the publication is confined within the church; and (3) there are no unusual or egregious circumstances. *Patton*, 212 S.W.3d at 554 (quoting *Heard v. Johnson*, 810 A.2d 871, 884-85 (D.C.App. 2002)).

Neither *Heard* nor the elements it lays out have any application in this case. First, this case is not an employment case. Guerrero was not an

employee, and Guerrero brings no claims that the church wrongfully removed him from his position as a deacon of the church. Moreover, the Diocese does not rely on the narrow “ministerial exception” to argue the trial court lacks jurisdiction, but rather on the more expansive ecclesiastical abstention doctrine. The ministerial exception is irrelevant to this case.

And, contrary to Guerrero’s position, the *Patton* court noted that there was no bright-line rule distinguishing between defamatory remarks published to members of the church versus communications with third parties. *Patton*, 212 S.W.3d at 555 n.12. Several Texas cases illustrate whether the ecclesiastical abstention doctrine applies when publication is made to third parties.

In *In re Godwin*, the pastor read a prepared statement from the pulpit at four different services “marking” a former member as one who should be avoided for causing division, relying on Romans 16:17.<sup>4</sup> *In re Godwin*, 293 S.W.3d at 746. Those

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<sup>4</sup> The court noted there are limits as to what can be said by church officials from the pulpit, and that, under the facts of that case, a statement that the former member was a child molester would not be protected, although statements that the former member engaged in bribery or slander were protected. *In re Godwin*, 293 S.W.3d at 749. The facts here, of course, are quite different. *See also, In re Alief Vietnamese All. Church*, 576 S.W.3d 421, 436 (Tex. App.—Houston [1st Dist.] 2019, orig. proceeding) (distinguishing *In re Godwin*). First, Guerrero has not been accused of being a “child molester,” but of having a credible allegation against him of sexual abuse of a person who habitually lacks the use of reason, which Canon law equates with a minor. CR:65.

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services included members, regular church attendees, guests interested in the

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Further, the facts here must be considered in light of the “scourge of abuse” that has plagued the Catholic church. *See* CR:142. The Diocese here sought to end that cycle of abuse and to encourage any additional victims to come forward. *See* CR:142.

**<https://www.everythinglubbock.com/news/klbk-news/the-roman-catholic-diocese-of-lubbock-plans-to-release-names-of-accused-priests/>**

**The Roman Catholic Diocese of Lubbock plans to release names of accused priests**

by: Mari Salazar

Posted: Oct 10, 2018 / 10:34 PM CDT / Updated: Oct 10, 2018 / 10:34 PM CDT

The Catholic Diocese of Texas plans to release names of priests accused of sexual abuse on January 31, 2019. The Roman Catholic Diocese of Lubbock plans to release names, as well. The Bishop of Lubbock said that they want to restore trust in the church and protect children from crime.

**RELATED :<https://www.everythinglubbock.com/news/local-news/lubbock-diocese-statement-on-names-of-clergy-accused-of-sexual-abuse/1513124387>**

Bishop Robert Coerver said they want to provide a safe place for everyone and the first step is to be transparent and help the victims through the healing process.

“That trust has been damaged especially through the events of this summer that have been widely publicized,” said Coerver.

There are more than 1,000 Catholic parishes in Texas and each one of those will be investigated. The



church is reviewing any accusation against a priest, not only involving minors.

“We’re going to have outside people come in and go through our files just to make sure that we’ve got all of the names and all of the circumstances so that when it comes time to publish we’ll be as thorough as we possibly can be,” Coerver explains.

In Lubbock, some of the cases date back as far as 1983. Coerver said those “credibly accused” of sexual abuse of minors are not serving in the ministry.

“And if we find that they are..which I don’t believe they are they would be removed form ministry immediately and further investigation would be done, but I don’t think we’re going to find that,” Coerver said.

Over at the Voice of Hope, 38% of the victims they meet with are minors and they want whoever impacted by sexual assault to know there’s always help.

“There will be people that would believe you. We will help you and we will try to get you on the road to healing,” said Leslie Timmons, Voice of Hope Community Educator.

Coerver stresses they’re praying for the victims and survivors of abuse of any kind. They pray especially for those families whose trust in the church has been broken.

“Those four words. Justice, Reparation, Mercy and Compassion. I would consider those the four key

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words I hold very dear in trying to work our way out of this crisis as a church,” said Coerver.



## TEXAS CATHOLIC CONFERENCE OF BISHOPS

### PREVENTING THE SEXUAL ABUSE OF MINORS

We are deeply sorry that some Church leaders have, at times, failed in their responsibility to protect minors. The Catholic Church throughout the United States has worked to improve protection, especially over the last fifteen years. We will remain vigilant to provide an even safer environment for every child we serve.

The Catholic Church in Texas is committed to the prevention of sexual abuse of minors by those who are in ministry in the Church and to promote healing for survivors of abuse. Each diocese has comprehensive policies in place both to respond to complaints and to prevent the sexual abuse of minors. These safety policies and practices are regularly verified by an external audit of each diocese.

### PREVENTION OF ABUSE

- **Safe Environment:** All Texas dioceses have implemented comprehensive “safe environment” education programs and have together trained many of the 8.5 million Catholics in the state – adults, minors, employees, clergy, and volunteers – on how to identify, report, and help prevent

abuse. Prior to his anticipated ministry, every priest seeking to minister in a diocese is to present a written attestation of suitability supplied by his bishop/religious superior.

- **Background Checks:** The dioceses conduct background evaluations for all bishops, priests, deacons, and religious, as well as other diocesan, parish, and school personnel who have regular contact with minors. Since 2002, criminal background checks have been completed regularly on volunteers, employees, and clergy who are involved in ministry in the Church.

#### RESPONSE TO ALLEGATIONS OF ABUSE

- **Reporting to Civil Authorities:** All of the Texas Catholic dioceses have policies to report to civil authorities whenever there is cause to believe that a minor has been sexually abused.
- **Removal from Ministry:** Diocesan policies provide that a bishop, priest, deacon, or religious who has been credibly accused of sexually abusing a minor will be removed from ministry.

#### HEALING OF SURVIVORS

- **Therapeutic and Pastoral Response:** Each diocese has a Victim Assistance Coordinator who facilitates the provision of counseling and other professional assistance to help those who report they were sexually abused as a minor. In addition, all victims of childhood sexual abuse by a minister of the Church have the opportunity to meet with the bishop in order to facilitate healing.

## PUBLICATION OF NAMES

- **Dioceses to Publish Local Lists:** Texas dioceses are actively reviewing files of bishops, priests, and deacons. By January 31, 2019, each bishop will publish a list of clergy credibly accused of sexual abuse of a minor in his diocese dating back to at least 1950.
- **How to Report:** Visit <http://txcatholic.org/how-to-report> for information on reporting abuse.

**FOX 34 NEWS TRANSCRIPT**

FATHERS... ALPHONSE BOARDWAY...  
NELSON DIAZ... PATRICK HOFFMAN... OMAR  
QUEZADA... AND DEACON JESUS GUERRERO...

FIVE MEN WHO THE CHURCH REPORTS  
HAVE "CREDIBLE" ALLEGATIONS OF SEXUAL  
ABUSE AGAINST THEM.

BOARDWAY SERVED AT SAINT GEORGE  
IN HASKELL... AND SAINT ANN IN STAMFORD.

HE WAS REMOVED FROM MINISTRY IN  
'89... AND DIED IN '97.

DIAZ... SERVED IN SAINT ELIZABETH...  
OUR LADY OF GRACE... BOTH IN LUBBOCK....  
SAINT FRANCIS IN WOLFFORTH AND SAN  
RAMON IN WOODROW.

HE WAS REMOVED IN 20-11.

HOFFMAN DIED IN OH FIVE... HE SERVED  
AT SACRED HEART IN PLAINVIEW... HE WAS  
REMOVED IN '87.

QUEZADA WAS ASSIGNED TO OUR LADY  
OF GRACE IN LUBBOCK... HE NEVER SERVED...  
AS HE WAS REMOVED FROM MINISTRY UPON  
ARRIVAL IN 2003.

DEACON JESUS GUERRERO... SERVED AT  
OUR LADY OF GRACE IN LUBBOCK FROM '97 TO  
'03 WHEN HE WAS SUSPENDED.

HE REAPPEARED AT SAN RAMON IN  
WOODROW IN '06... THEN WAS PERMANENTLY  
REMOVED FROM MINISTRY TWO YEARS LATER.

MARTIN SAYS: "To our knowledge, everyone of these were the first allegation that ever came forward and they were removed immediately."

MARTY MARTIN... CHANCELLOR OF THE LUBBOCK DIOCESE SAYS IN ALL... THERE WERE FIVE VICTIMS.

NONE OF THE MEN NAMED HAVE HAD CIVIL OR CRIMINAL CASES BROUGHT AGAINST THEM IN LUBBOCK COUNTY... NOR IN FEDERAL COURT.

MARTIN SAYS IN SOME INSTANCES THIS WAS SIMPLY DUE TO \*PARENTS NOT WANTING IT TO BE PUBLIC\*... THOUGH, ALL INFORMATION WAS PROVIDED TO THE PROPER AUTHORITIES.

THE REASON THESE NAMES WEREN'T RELEASED SOONER?

MARTIN SAYS THE BISHOPS AT THE TIME WANTED TO KEEP CHURCH ISSUES... WITHIN THE CHURCH.

MARTIN SAYS: "The normal situation was that the authorities were going to do what they were going to do and if the name were released through the authorities then that was fine, we certainly weren't going to object to that but we felt that whatever was handled within the church as far as church punishment was concerned needed to remain in the church."

HE DOES SAY THE NAMES WERE RELEASED TO CHURCH MEMBERS... THOUGH THEY WEREN'T MADE PUBLIC.

IN HIS STATEMENT TO THE CHURCH...  
BISHOP COERVER APOLOGIZES TO ALL  
VICTIMS OF ABUSE... QUOTE... "FOR WHAT  
YOU HAVE SUFFERED AND FOR THE WAY  
CHURCH LEADERSHIP HAS  
\*SOMETIMES\* FAILED YOU IN THE PAST.

VICTIM SUPPORT GROUP SNAP...  
SURVIVORS NETWORK OF THOSE ABUSED BY  
PRIESTS... APPLAUDS THE RELEASE OF THE  
NAMES... BUT REMAIN CAUTIOUS.

IT CLAIMS THE ONLY WAY TO ENSURE  
BISHOPS IN TEXAS ARE TRULY SINCERE  
ABOUT REBUILDING THEIR SACRED TRUST...  
IS TO ALLOW FOR INDEPENDENT.... PROPERLY  
TRAINED EXPERTS IN LAW ENFORCEMENT TO  
REVIEW ALL THE FILES.

SNAP CITES THE "SECRET FILES" FROM  
THE PENNSYLVANIA GRAND JURY REPORT  
LAST YEAR.

IT ASKS KEN PAXTON'S OFFICE TO  
INVESTIGATE THE CRIMES... AND WHAT IT  
CALLS... COVER UPS.

MARTIN SAYS HE'S CONFIDENT ALL THE  
PRIESTS WERE NAMED... HOWEVER HE URGES  
YOU TO REPORT IF YOU'RE A VICTIM.

HE ALSO SAYS THE CHURCH \*IS\* SAFE  
FOR CHILDREN.

MARTIN SAYS: "Everybody that volunteers or works  
in any church function has to be compliant with the  
safe environment program and all of that teaches the  
individuals not just what they shouldn't do but how



they can recognize is someone else is doing something that is inappropriate.

THE LUBBOCK DIOCESE'S RECORDS ONLY DATE BACK TO 19-83.

BEFORE THAT... IT WAS PART OF THE AMARILLO DIOCESE.

AMONG CASES REPORTED DURING THAT TIME... FIVE OTHER PRIESTS FROM OUR AREA.

AMARILLO'S DIOCESE REPORTS A TOTAL OF 30 CREDIBLE ACCUSATIONS.

AUSTIN KEMKER... FOX34 NEWS AT NINE.